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A

NARRATIVE

AND

Authentic Report

OF THE

PROCEEDINGS

AT THE

ELECTION

For Knights of the Shire,

FOR THE

COUNTY OF NORFOLK,

From its Commencement July 12th, to the Close of the SCRUTINY on the 28th of August, 1802.

Norwich:

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ADVERTISEMENT.

THE late severe Contest for the Representation of this County has been attended by so many extraordinary circumstances, that an attempt to comprise them in an impartial Narrative can scarcely be unacceptable to the Public. Indeed the Novelty alone of a County Scrutiny, the FIRST *that has been undertaken since the Act for regulating Scrutinies was passed, and probably the* LAST *before very material Alterations be made in that Statute, was a strong inducement to the Publishers to give a full Report of the Proceedings; which they were enabled to do by means of some very ample Notes taken in Court. A short Account of the Principal Cases which occurred has also been added, with the hope that they will be found of some use in a professional view.*

With the Comparative View of the Poll of 1768, *and that of the present year, they have been favoured by a Gentleman, on whose accuracy the greatest confidence may be reposed.—And they have to acknowledge with thanks the obliging assistance of many other Gentlemen who have kindly interested themselves in the Publication.*

STEVENSON & MATCHETT.

Norwich, Nov. 1802.

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NORFOLK

ELECTION & SCRUTINY.

THE Parliament having been dissolved by Proclamation on the 30th of June, the following Notice from the High Sheriff appeared in the Norwich Papers of the 3d July:

JULY 1, 1802.

The SHERIFF of the County of Norfolk having received his MAJESTY's WRIT for electing TWO KNIGHTS to serve for the said County in the Parliament to be holden at Westminster, on the Thirty-first day of August next ensuing, doth hereby give Notice to all whom it may concern, that the said ELECTION will be at a Special County Court to be holden for the said County, on MONDAY the 12th day of this inst. July, at the Castle of Norwich, in the Shire-house there, in the said County, at Nine o'clock in the Morning.

ROBERT WILSON, Esq. Sheriff.

And at the same time appeared a joint Address from Sir Jacob Henry Astley, Bart. and T. W. Coke, Esq. in the following terms:

To the Gentlemen, Clergy, and Freeholders, of the County of Norfolk.

GENTLEMEN—Conscious of having discharged our duty as your Representatives with Integrity and Independence—we are again encouraged to solicit the distinguished honour of serving you in Parliament. Should we be so happy as to obtain your suffrages upon this occasion, we shall think our gratitude for the confidence reposed in us cannot be better displayed, than by anxiously promoting, according to our best judgment, the Political Prosperity of the

Empire at large, and the Landed and Commercial Interests of this truly respectable County in particular. We have the honour to be,

With great respect, Gentlemen,
Your much obliged and faithful humble Servants,
JACOB HENRY ASTLEY,
Norwich, June 23, 1802. THO. WM. COKE.

Mr. Coke had represented the County in four Parliaments. He was first elected without opposition on the death of his Father, Wenman Coke, Esq. in 1776. In 1780, he was re-elected with Sir Edward Astley, without opposition. In 1784, when Mr. Fox's famous India Bill had rendered him and his Friends unpopular, Mr. Coke was opposed by Sir John (now Lord) Wodehouse, who came forward in the Interest of the new Minister, Mr. Pitt, and the sense of the County appearing to be decidedly in his favour, Mr. Coke thought proper to decline taking a Poll. In 1790 and 1796, Mr. Coke was re-elected with Sir John Wodehouse, without opposition. Mr. Coke, in the commencement of his political life, was a decided opposer of Lord North's Administration and the American War:—Since the Coalition in 1783, he has remained a firm friend of Mr. Fox, and an open and avowed enemy to the measures which have been pursued by Mr. Pitt and his Colleagues.

Sir Jacob Astley, the Son of the late Sir Edward Astley (who was the popular and highly respected Representative of the County in four successive Parliaments) was elected without opposition in 1797, on Lord Wodehouse's acceptance of a Peerage. His public character has not yet been marked by any decided political conduct.

The first intimation of an intention to oppose the re-election of the late Members, was conveyed to the Public in the following Hand-bill:—

NORFOLK ELECTION.

As the High Sheriff has fixed the day of Election without a previous day being appointed for the Nomination of proper Candidates to represent the County; it remains only for the numerous Freeholders, if they have any spirit, to EXERT themselves in boldly bringing forward, and giving their suffrages to a WODEHOUSE, who will, like his forefathers, do honour to their choice.

[The Hon. John Wodehouse, who is alluded to in the above hand-bill, is the eldest son of Lord Wodehouse, and is Colonel of the East Norfolk Regiment of Militia. He represented the Borough of Great Bedwin in the last Parliament, in which he distinguished

guished himself as a supporter of the Administrations of Mr. Pitt and Mr. Addington, and as a Friend to the Peace. His Father, Lord Wodehouse, represented the County in three successive Parliaments, and his Grandfather, Sir Armine Wodehouse, was Member for Norfolk from 1736 till the great contest in 1768.]

In answer to the above hand-bill, the following Address appeared in the Norwich Papers;

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN,—The hand-bills circulated through the County, obliquely reflecting upon the High Sheriff, for having fixed the day of Election without a previous nomination of Candidates, has attracted general observation, and ought not to be passed over in silence; permit me therefore to remind you, that the dissolution of Parliament was known to the public long before it took place, and any Gentleman ambitious of representing this County, might have signified his intentions by a public and manly Address to the Freeholders, after the example of Sir JACOB ASTLEY and Mr. COKE; it was likewise competent to any Freeholders desirous of a meeting for the nomination of Candidates, to have applied to the Sheriff for that purpose. No such Address has however been made, nor has any such Meeting been requested, and therefore the Sheriff had no authority whatever to convene the Freeholders, before the receipt of the writ for the Election: That writ was delivered to him on the 30th day of last month, and it then became his official duty to appoint an early day for the Election, of which notice was publicly proclaimed on the first day of this month, since that time no application has been made for a County Meeting, (though there has been sufficient time for the purpose) and therefore there has been no pretence whatever to insinuate that the Sheriff has been guilty of any neglect of duty, or shewn a want of attention to the County.

The composer of the hand-bill doubts whether the Freeholders have "any spirit," and, if they have any, attempts to give it a whimsical direction, by exhorting them to bring forward and give their suffrages *to the Son of a PEER*, contrary to the spirit of that policy and plan of representation which has been long recognized and established by the general sense of the Freeholders of this County. Those Freeholders will do well to consider maturely, whether "their spirit" can be better exerted than in the support of our late worthy and independent members—whether public confidence can be placed in better hands—and whether those Gentlemen have in any instance been drawn from their public duty by any interested or *ambitious* views. If these questions do not raise in your minds any sentiments unfavourable to the present Candidates

(whose forefathers have often held the situation which they lately filled) you will not, I am persuaded, exchange either of them for the gentleman named in the hand-bill, whose father, when a Commoner, represented you in Parliament, without condescending to make a bargain with his constituents, or to solicit a pecuniary subscription to defray the expences of his Election. No appeal is made to us at the present crisis upon any grand constitutional question; *the war is at an end*—let us now cultivate the arts of peace, but let us not quarrel with ourselves, nor disturb the peace of the county merely from personal motives—let us not encourage a *Subscription Candidate*—let us not attempt to displace those who have for years served us with independence and integrity, merely for the purpose of gratifying *Aristocratic Ambition*, or of promoting the views of dissatisfied and interested men.

I am, Gentlemen, yours, &c.

July 7, 1802. AN INDEPENDENT FREEHOLDER.

The issue of the Norwich Election (which took place on Monday the 5th July) having been unfavourable to Mr. WINDHAM, the friends of that Gentleman, on whose eminent character and talents it would be not only unnecessary but presumptuous to offer any comments in this place, thought it their duty to call upon the county to bring him forward as its Representative. They accordingly issued the following hand-bill:

To the Norfolk Freeholders.

The event of the Election for Norwich having deprived that City, and the Country in general, of the eminent services of that highly-distinguished Statesman, the Right Hon. W. WINDHAM, the Friends of that Gentleman are earnestly requested to consider of the expediency of putting him in Nomination for the County of Norfolk; and as the Election is fixed for Monday next, it is most anxiously hoped that they will lose no time in manifesting their zeal for accomplishing this most important object. *July* 7, 1802.

On Thursday the 8th of July, a conference took place between Mr. Windham and Col. Wodehouse, in which the former declared that it was not his intention to offer himself *unconditionally* to the County, as he was not prepared to meet the expences of a contest. Col. Wodehouse upon this issued an Address in the following terms:

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—Having received the most flattering invitations from different parts of the County, to offer myself as a Candidate at the ensuing Election, my answer has invariably been, that much as

as I felt flattered by so distinguished a preference, I was not in a situation to risk the severe expence necessarily attending a Contested Election; that I partook most cordially in their wish of bringing forward a Candidate, and that any Gentleman, whose Political Principles agreed with mine, and whose Character I approved, should have my support.

No Gentleman has declared such an intention, notwithstanding the earnest wish manifested in all parts of the County.

I feel myself, therefore, called upon to declare, that if on the day of Election, it is the wish of the Gentlemen, Clergy, and Freeholders, that I should come forward, and they are willing to attend the Election at their own Expence, I am prepared for the event.

It may possibly be thought a degree of arrogance on my part to presume that such exertions will be made in my favour, and I should certainly not have ventured to obtrude myself upon their attention on these, or any other grounds, were it not for the pressing solicitations which I have met with.

I place my chief reliance on that partiality, which the County has so repeatedly shewn to my Family, and feel confident of their Support.

Should I be so fortunate as to become the object of their choice, I trust that a faithful and conscientious discharge of my duty, will prove me not altogether unworthy of so distinguished an Honour.

JOHN WODEHOUSE.

Norwich, July 8, 1802.

The following Address was also published:—

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—The means which have been made use of to create an Opposition to us, and to disturb the Peace of the County, have at last (though within three days of the Election) brought forward an HONOURABLE Gentleman, who, in return, "for the Par-"tiality which the County has repeatedly shewn to his family," and for "the flattering Invitations, and pressing Solicitations," which he says he has received from different parts of the County, makes only a formal Declaration, "that if, on the Day of Election, you "wish that he should come forward, and you are willing to attend "AT YOUR OWN EXPENCE, he is prepared for the event."

We shall be thankful to you for your countenance and support on the day of Election, without expecting, or calling upon you for a Pecuniary Contribution to defray our Expences;—on that day, We shall be prepared to meet the HONOURABLE Gentleman with confidence, trusting that our private Characters will not suffer by any Comparison with his, and that our Political Principles are in unison with yours.

Impressed

Impressed with gratitude for the partiality which you have hitherto shewn to us, we shall wait the event of a Poll with the most sanguine hopes of success; and if we shall be again returned as your Representatives to Parliament, we shall continue to serve you (as our Ancestors have often done before us) with integrity and independence, and (without making any inviduous comparison) we flatter ourselves, that our past conduct has not afforded any ground for your preferring an Honourable Gentleman, who will probably in the Course of Nature succeed to a PEERAGE which was conferred on his father when sitting as *Your Representative* in the last House of Commons.

We have the honour to be, Gentlemen,
With much respect, your faithful and obedient Servants,

JACOB HENRY ASTLEY
Norwich, July 9, 1802. *THOMAS WILLIAM COKE.*

But the Friends of Mr. Windham, in the mean time, received the strongest assurances from various parts of the County, that voluntary support would be given to his Election, sufficient to protect him from the danger of incurring any expence. A Meeting of the Freeholders disposed to promote his nomination was therefore called by an Address issued on the Friday morning:

To the Freeholders of Norfolk.

GENTLEMEN—An Address has just appeared, under the signature of a Gentleman, distinguished by his Birth, and by the respectability of both his public and private Character, soliciting your suffrages (free of expence) at the ensuing Election.

Without adverting to the fair pretensions upon which this claim to your support may be grounded, I shall take the liberty of calling your attention towards another Gentleman, who has attained the highest political eminence, as well by his integrity as by his talents, and who, at this moment, through the mean arts of an undermining Faction, stands deprived of a Seat in that Assembly, of which, for eighteen years, he has been one of the greatest ornaments.

It is scarcely necessary for me to name the RIGHT HON. WILLIAM WINDHAM;—whose character points him out as a Bulwark to defend the Independence of the County against the arrogant attempts of one of your late Members, to render it a Borough, subservient to *his* influence.

Already smarting from the effects of a most severe and unusually expensive Contest, it cannot be expected that Mr. WINDHAM (who has always eminently preferred his political integrity to his private interest) should be prepared to meet the demands with which an undertaking of this magnitude seems to threaten him.—It is now then, Gentlemen, the time to manifest that zeal and liberality which has

has always distinguished you in the cause of Loyalty and Independence, by standing forward as Volunteers to replace this exalted Statesman in the station which he has so conspicuously graced.

MONDAY is fixed for the Day of Election—the shortness of the interval calls loudly for promptness and decision.—I trust therefore, that the Loyalty, the Respectability, and the Honour of the County, will shew themselves to be effectually roused, by your assembling, in your whole Strength, at NORWICH, TO-MORROW, when you will concert the means of exalting your Political Importance in the scale of the Empire, by deputing as your Representative, the greatest living Champion of the Honour of your Country, and the Purity of its Constitution.

AN INDEPENDENT FREEHOLDER.

NORWICH, FRIDAY, July 9, 1802.

P. S. Those Gentlemen who feel with me the great importance of this Object, will most effectually promote it by meeting at the Angel, in the Market-place, To-morrow, at Twelve o'clock.

The above Addresses from Colonel Wodehouse, and the Independent Freeholder, appeared also in the Norwich Papers of Saturday the 10th July, together with the joint Addresses of Sir Jacob Astley and Mr. Coke, and the following separate Address from Sir Jacob Astley, alluding to some reports which had been in circulation unfavourable to that Gentleman's character; but of which, it is proper to observe, his Opponents had not taken any public notice whatever; nor had the smallest credit been given to them by the Friends of either Mr. Windham or Col. Wodehouse:

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—I have learnt with no small degree of concern, that reports have been circulated with great industry amongst you, reflecting on my private character, and of which it is unquestionably the object, by lessening me in your esteem, to deprive me of the support I still flatter myself I may expect from you at the ensuing Election.

The charges brought against me are of such a nature, that if I were to attempt an answer, I must enter into a relation of the principal events of my private life, which even if I could consider as interesting to you, I should find it impracticable to do at the present moment.

All I can now do, is most earnestly to entreat that you will suspend your belief of the unjust imputations thrown upon me, and to pledge myself to answer fully and distinctly, and I will add very confidently

confidently to your satisfaction, any charge which any man of respectability shall think proper to alledge against me.

My anxiety to stand well in your estimation would be great at any time and under any circumstances, but you may be assured it is heightened when I inform you of my fixed determination to offer myself for your choice on Monday next. On that day I trust it will be found, that as the genius of the laws under which we have the happiness to live, permits no man to be condemned unheard, the generous spirit of the Freeholders of Norfolk will not suffer me to become the victim of calumny the most foul and scandalous.

Confiding in the candour and liberality of your sentiments, I flatter myself that the ambition of my respectable colleague and myself will be fully gratified at the ensuing Election. I beg leave to subscribe myself, Gentlemen, with great respect,

Your faithful and obedient Servant,

JACOB HENRY ASTLEY.

Norwich, July 8, 1802.

Saturday was necessarily a day of great agitation in Norwich.—The Friends of Mr. Windham assembled at the Angel at the hour mentioned in the Address from the Independent Freeholder; and a Meeting of the Electors in the interest of Col. Wodehouse took place at the same hour at the King's Head.—At these Meetings, both of which were numerously attended, it was thought necessary to depute a Committee from each, to consider whether it would be adviseable that both these Gentlemen should be supported, and which of them should retire in case it might appear expedient that one should be withdrawn. The Meeting of Mr. Windham's Friends was adjourned till four o'clock to receive the report of their Committee; and on their being re-assembled, the Chairman, Sir Edmund Lacon, informed them, that it had been found impossible to effect any of the purposes for which they had been deputed to meet the Committee of Col. Wodehouse's Friends.—Upon which, the Meeting resolved to support the nomination of Mr. Windham, independently of any other Candidate, and to raise a Subscription for effecting their purpose. A large sum was immediately subscribed, and the Country Gentlemen and Yeomany present entered into a resolution to bring their tenants and neighbours to the Poll free of expence.

Sir Edmund Lacon stated to the Meeting that a great majority of the Freeholders in Yarmouth had volunteered their services for Mr. Windham in the most handsome and flattering manner. On his leaving the Chair to return to Yarmouth with the other Gentleman who had been deputed from thence to attend the Meeting, it was taken by General Cowell, who continued to sit for the purpose of receiving the subscriptions which were continually increasing.

At about seven o'clock in the evening, the following Hand-bill was issued from Col. Wodehouse's Committee.

Mr. WINDHAM's

Mr. WINDHAM's Committee having expressed their determination to bring him forward on the Day of Election, and opened a Subscription for that purpose, COL. WODEHOUSE, by the advice of his Committee, and anxious that the great object for which he was brought forward should not be defeated, gives up his pretensions to Mr. WINDHAM. *Norwich, July* 10, 1802.

Upon this the Committee of Mr. Windham's Friends announced their intention to support that Gentleman, in a Bill, of which copies were immediately dispersed in every part of the County:

COL. WODEHOUSE having relinquished his pretensions to the Representation of the County of Norfolk in favour of the Right Hon. WM. WINDHAM, that Gentleman will be put in nomination on Monday morning, when the Freeholders in his interest are particularly requested to attend.

Subscriptions are received at Back's Bowling Green to defray the charges of his Election, and a great number of Freeholders have agreed to attend free of expence. *July* 10, 1802.

The next morning the activity of Mr. Windham's friends shewed itself in almost every town and village. At Yarmouth, many of the principal Gentlemen of that Borough, amongst whom were the Mayor (Mr. Preston) the Deputy Mayor (Mr. Barker) Sir Edmund Lacon, the Family of Fisher, and Mr. Paget, assembled the Freeholders of the town; and, besides undertaking to bring them to Norwich without expence, they began a handsome Subscription for the general purposes of the Election. The bustle and preparation of this day throughout the county, in Mr. Windham's favour, exceeded the most sanguine expectations of his friends.

But on Sunday morning, Mr. Windham, who, on receiving intelligence of these exertions, had returned from Mr. Browne's, at Hetherset, to Mr. Hudson's, at Norwich, thought proper to decline giving any further trouble to his Friends, assigning his motives in the following Address:—

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—Having uniformly declared to all who did me the honour to speak to me upon the subject, that it was wholly out of my power to offer myself as a Candidate for the County, without the fullest assurance that no part of the expence should fall upon me, you will allow me, I am sure, to say, that being possessed of no adequate assurance to that effect, great and flattering as the exertions are which have been made by many for that purpose, and

strong as the evidences are of what the zeal and liberality of the County might yet further intend, I must resign the pretensions, which your unlooked for favour would have given me, and not appear any longer to occupy a post, which may be filled by others with greater advantage to your interest. The decision which I thus feel myself compelled to make, might be rendered more necessary, as I trust it will not be less satisfactory to you, by the circumstance of my having received the confirmation, that through the kindness of friends at a distance, a Seat in Parliament is just secured to me in another place.

With the highest sense of the honour which you have intended me, and with the deepest impressions of your kindness and favour,

I have the honour to be, Gentlemen,
Your faithful and most obliged humble servant,

Norwich, July 11, 1802. *W. WINDHAM.*

It should be observed, that Mr. Coke, in a conference with Mr. Windham, on the Sunday morning, declared his intention of supporting his Colleague, Sir Jacob Astley, to the utmost possible extent of the contest.

Mr. Windham immediately communicated his resolution to Col. Wodehouse, who was then at Kimberley, but who lost no time in setting off for Norwich, to announce his intentions of abiding the event of a Poll. The following Address and Hand-bill were issued and circulated through the county without delay :—

To the Gentlemen, Clergy, and Freeholders, of the County of Norfolk.

GENTLEMEN—Mr. Windham having withdrawn his pretensions, I beg to offer myself again on the grounds proposed in my former Address. Your obedient Servant,

Norwich, July 11, 1802. JOHN WODEHOUSE.

The Right Hon. WM. WINDHAM having secured a seat in Parliament, the Friends of that Gentleman are particularly requested to give their Votes and Interests in support of COLONEL WODEHOUSE, at the ensuing Election for the County of Norfolk.

Norwich, July 11, 1802.

The Nomination took place on Monday the 12th of July, pursuant to the Proclamation. The following Account of the Proceedings, extracted partly from the Norfolk Chronicle, and partly from the Norwich Mercury, will, it is conceived, be found sufficiently accurate.

After the Writ for proceeding to the Election and the Act against Bribery had been read, the High Sheriff addressed the Freeholders in the following terms:

GENTLEMEN—Having received his Majesty's Writ for the Election of two Knights to serve in Parliament for this County, I have to request that you will proceed to such Election; and should there be a contest for that honour, I dare affirm it will be conducted with that candour and liberality which should always distinguish so respectable a County.

E. P. Jodrell, Esq. then addressed the Court in a long speech, in which he pronounced a high eulogium on his friend SIR JACOB ASTLEY, and said, that as it had before fallen to his share to recommend him to the County, he should now, with great confidence, repeat his assurances, as they had borne the test of four years honourable experience.

He was seconded in a short speech by *Col. Bulwer*; after which

Sir Jacob Astley assured the Freeholders, that he should consider it the highest honour that could be conferred on him to be again returned as their Representative;—at the same time he lamented, that his character had been attacked by calumnies, which he had had as yet no opportunity of answering, but against which he trusted he should soon be able to furnish the most satisfactory proofs of their falsehood.

E. Rolfe, Esq. of Heacham, nominated Mr. COKE, in a speech of some length, in which he stated, with great warmth of friendship, his personal attachment to that Gentleman, and his full approbation of his Parliamentary conduct;—alledging, that his large property in the County, the great respectability and hospitality of his private character, his firm attachment to the principle of our Constitution, as settled by the Revolution in 1688; and his being a Commoner, wholly unconnected with the *Upper-House*, rendered him the most proper object that could be found for the Representation of the County of Norfolk.

Sir John Lombe, Bart. seconded this nomination.

Mr. Coke said, he should not detain the meeting by any professions of his principles, which must be well known to the inhabitants of a County whom he had represented since the year 1776.—They would best speak for themselves. On such occasions he disliked all professions; for during his life he had often found that they who promised the most performed the least. He was not intended by nature for public situations. He was much more happy in his domestic employments and Agricultural pursuits; but as he had been called forth by the voice of the County, he had endeavoured to fulfill his engagements with fidelity and integrity.

Mr. Coke then entered into a brief review of his political life, in which he brought to the recollection of the Meeting his opposition to the American War, and to the late "bloody, expensive and extended War." Such indeed it had been, he could quote the best authority

for the assertion—the King's Speech itself. He had, he said, supported the Peace because he thought it necessary under the existing circumstances, not because he thought it a good Peace, for if any Gentleman would call it a Capitulation, he would join in the use of the expression.

Very free observations he knew had been made on his principles—In such animadversions it was customary to employ the epithets of Democrat and Jacobin; words applied indiscriminately, and which some thought themselves justified in fixing upon every one who differed in opinion from themselves. Every body, however, knew the large stake he held in society, and no one would suspect him of favouring the Doctrines of Equality.

At the present moment he must take the liberty of reminding the Electors, that in the choice of the Representatives of a County, it was of infinite importance that the Election should fall on persons of similar sentiments and opinions. This most desirable unison had existed between his late Colleague and himself from the hour of that Gentleman's first taking his Seat, and should the Freeholders re-elect Sir Jacob Astley, he could confidently assert that the same unison was likely to prevail: but should the Hon. Gentleman, who would probably become his opponent, be chosen, there was little chance of such a coincidence; and should that Hon. Gentleman be returned, it might happen that he would soon be called to the House of Peers, and the County be again thrown into a ferment.

He must also recall to the recollection of Gentlemen, that at the period when his late worthy Colleague was elected, the Meeting was the most respectable of its kind, and the choice of Sir Jacob was unanimous. It had then been recommended to him not to be present, as it might seem that he intended to influence the County; he had however thought fit to exercise the right which he possessed in common with every other Freeholder, to attend and to give his vote. Mr. C. now trusted that, if no serious charge could be substantiated against his friend, the Electors would not rashly change the good opinion which had produced the unanimity which was then so honourably conspicuous; a long intercourse had given him reason to hold his Colleague in the highest possible estimation both as a public and as a private man, and so strong an interest did he take in Sir J's. Election, that he should consider every vote given to his friend as a second suffrage bestowed upon himself.

The Gentleman who had done him the honour to nominate him a Candidate, had said he was a Commoner, and was likely to remain a Commoner. It was true. He was born a Commoner—he had lived a Commoner—and his greatest pride would be to remain a Commoner, for in his eyes to be the Representative of such a County as Norfolk, was infinitely more honourable than the acquisition of any rank in the Peerage, and in the same spirit he should ever think it his duty to resist an Aristocratical Representation of

the

the County. If therefore the Freeholders would not desert him, he would assure them he would never desert them.

Sir Thomas Beevor said, Mr. High Sheriff and Gentlemen, I will take the liberty of nominating as a Candidate for this most respectable County, a Gentleman, descended from an ancient and honourable family, whose ancestors have, with the highest credit to themselves, and with the unanimous approbation of their constituents, been repeatedly returned our Representatives to Parliament; and when added to this I say, that he is a man of the strictest integrity and of very superior abilities, and one whose character either in public or private life has never been impeached—I conceive it almost unnecessary to add, that the person I mean is Colonel Wodehouse; a Gentleman for whom I can with confidence become a pledge, that he will never in any instance tarnish the honour of his family.—Gentlemen, so much of your time has been already spent by the expatiations on the business of the day, that I will not trespass any longer on your patience than by briefly adverting to an objection made on the other side of the Court, to the Candidate I have the honour to propose, on the score of his being the Son of a Peer, an objection unexpected from that quarter, as it must be well known to every one present, that a near relative of one of the Candidates, the Son of a Peer in the very House of Holkham, had represented this County, whose successor was also the Son of the Noble Peer at Rainham, (to whom this Country is most highly indebted for that great Constitutional Force, the Militia), with many others.* If the objection arose from the dependency in such Representatives, I must contend that such men must be deemed more independent who have attained the utmost object of their ambition and wishes, than those who are probably living in the hopes and expectations of similar honours. As no Money Bill can originate from or suffer the least alteration by the Peers, it would be most unjust indeed that their property should have no representation.

Mr. Cubitt said, he seconded the nomination of the Hon. Col. Wodehouse with the greatest pleasure; he would not trespass upon the time of Gentlemen by entering into the particulars of Colonel Wodehouse's private character, further than by saying the more it was known the better he was well convinced it would ever be respected.

Col. Wodehouse's political conduct was well known to many of the Gentlemen present—he had entered into Parliament after the war had been commenced, and given his firm support to the Administration who conducted it in defence of this Kingdom and its Constitution, till an opportunity offered of making a Peace that had met with the general approbation of the Country; to that Peace Col. W. had taken the earliest opportunity of giving his decided support.

* Colonel Walpole and General Walpole, Sons of that worthy Peer Lord Walpole, are both in Parliament, and their independence has never been suspected.

Mr. Cubitt well knew Col. W's reluctance to come forward on this occasion, were it not to assert the independence of the County; he could not agree with Mr. Joddrel in thinking a County was not properly represented if it did not return *two* Members of the same political sentiments; as he conceived, that if a County was divided in its political opinions, which he trusted would appear to be the case in the present contest—if one party returned two Members, one half of the Freeholders would not be represented; to support their rights Col. W. had come forward, and he had no doubt, would meet their warmest support.

Col. Wodehouse then addressed the Court in a neat and appropriate speech, in which he observed, that nothing but the earnest solicitations of his friends shou'd have brought him forward on the present occasion, and that he had been ready to relinquish his pretensions in favour of those of an illustrious Statesman, who, had he come forward, would have had a just claim to the suffrages of the same interest to which he (Col. Wodehouse) looked for support, although there might be a shade of difference as to their opinions on some points. He added, that his ambition had never looked to an object so high as the Representation of the county, but that he had been summoned to the Hustings from every quarter of Norfolk. He came forward upon the same principles which had, at a very early period of English History, distinguished his Ancestors, and which had descended in a long line to himself. These principles he had supported, and these he was determined to maintain.

Mr. Fellowes asked Col. Wodehouse whether he had not formally declined to stand as a Candidate.

Col. Wodehouse replied, that he had declined because he found that his interest would clash with that of Mr. Windham, but that such a resignation must have been considered as conditional, and could not be binding on him when an alteration of circumstances again left him an opportunity of coming forward.

This produced a little altercation.—*Mr. Coke* stated that he had understood from Col. Wodehouse himself, that he had meant to decline altogether, and not to give him (Mr. Coke) any further trouble.—He also related the result of a conference with Mr. Windham, and spoke handsomely of the openness and liberality of that Gentleman's character, lamenting, that a difference in political opinions had occasioned an interruption of their former friendly intercourse.

Captain Gooch positively stated that Col. Wodehouse had never relinquished the idea of offering himself to the County; but, on the contrary, immediately after he had withdrawn to make room for Mr. Windham, had explicitly declared, that should that Gentleman think proper not to yield to the solicitations of his friends, he was ready to come forward again.

Lieut.

Lieut. Col. Harvey said, that being a resident in Norwich, he should not have thought of addressing that Meeting, had not a transaction been alluded to, in which, as a friend of the Right Hon. W. Windham, he had had a material share. He said, that it was very natural for Mr. Windham's friends to join the loyal and zealous Yeomanry and Freeholders, who had come forward to assert the Independence of the County, and who had, in the most liberal and handsome manner, determined to support his Election, free of Expence. He was now authorised by his Right Hon. Friend to request that this spirited support, and those noble exertions which had been intended for him might now be directed to secure the Election of Col. Wodehouse, as his own individual interest would certainly be given in favour of that Honourable Gentleman. Mr. H. recalled to the recollection of the meeting the uprightness and loyalty with which the noble antient Wodehouse Family had long represented this county, and that the Hon Col. was entitled to their thanks by his own Parliamentary conduct, by co-operating in those wise and firm measures which had preserved to this our country, the palladium of Magna Charta—the bulwark of our venerable constitution—the Imperial Parliament of King, Lords, and Commons, and enabled the freeholders to be now assembled free and uncontrouled to deliberate upon the high and important choice of their representatives, for which dignified situation Colonel W. was so eminently qualified.

Gen. Walpole asked Col. Wodehouse if he had not voted for the Indemnity of those Ministers who had sent money to the Emperor. To this Col. Wodehouse replied, in a spirited manner, that his whole parliamentary conduct was before the public, to whom he should leave the decision.

Mr. Mingay began by saying, that he was a Freeholder of Norfolk, and had a right to speak, although he was not the son of a Peer, but the clamour for the question was now so great that he was not suffered to go on—The Sheriff then called for a shew of hands, which he declared to be in favour of Sir Jacob Astley and Mr. Coke. A Poll was then demanded by Colonel Wodehouse's Friends, and the Court adjourned at half past twelve.

The Poll did not begin till near one o'clock. The first return made to Col. W's. Committee had a majority of *one* vote in favour of Sir Jacob Astley over Col. Wodehouse, but in every subsequent return the latter had the advantage, and his majority continued to increase greatly till the close of the first day's Poll, when the numbers were,

For Mr. Coke	1563
Col. Wodehouse	1525
Sir Jacob Astley	1164
Majority for Col. W.	361

On

On Tuesday the majority for Col. Wodehouse continued to increase rapidly, and upon one return his Poll was within 16 of Mr. Coke's. When the Books were closed in the evening, the numbers were,

For Mr. Coke	2606
Col. Wodehouse	2556
Sir Jacob Astley	1975

Which left a majority of 581 in favour of Col. W. who, in the judgment of many of his friends, had now polled half of the Freeholders of the County. For it was an opinion rather prevalent, that, from the consolidation of estates and other causes, the number of Freeholders had decreased since the last contest in 1768—when, after several months of preparation, and a very close-fought battle, the whole number polled was 5568.—The friends of Sir Jacob Astley, however, relied on a different calculation, and the event proved its superior accuracy. They spoke with confidence of the numbers which they could bring from Marshland and Clackclose; a force, which it seems they had kept back to prevent unnecessary expences, until it should be certain that it would be wanted. On the other hand, the strength of Col. Wodehouse's interest, which lay nearer the field of action, had been poured in early in the contest.

On Wednesday, the Marshland and Clackclose Voters, for Sir Jacob Astley, had the effect of considerably reducing Col. Wodehouse's majority, for at night the numbers were,

For Mr. Coke	3312
Col. Wodehouse	2934
Sir J. Astley	2629
Majority for Col. Wodehouse	——305

And on Thursday, this majority experienced a still further deduction, and left the Poll,

For Mr. Coke	3754
Col. Wodehouse	3157
Sir J. Astley	3050
Majority for Col. Wodehouse	——107

It should be observed, that the above numbers are taken from the returns made to Col. Wodehouse's Committee, and that upon those made to Sir Jacob Astley's and Mr. Coke's, the majority appeared to be but 61. This difference, which increased before the final close of the Poll, seems to have arisen from the mistakes of the Cheque-Clerks in making their entries; which might naturally be expected amidst the bustle and confusion at the Booths. When the Books were cast up by the Sheriff, it appeared that neither of the accounts was accurate.

From this day Mr. CHARLES MARSH, with the approbation of all parties, sat as the High Sheriff's Assessor, to determine upon the legality of the votes which were objected against by the checks at the Poll.

On

On Friday evening the Poll stood according to Colonel Wodehouse's returns,

For Mr. Coke	3952
Col. Wodehouse	3286
Sir Jacob Astley	3241

But by the returns to Sir Jacob Astley's Committee, the numbers for him and Col. Wodehouse were exactly equal.

On Saturday, the following Addresses from the Candidates appeared in the Norwich papers:

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—Permit us to return to you our most cordial and sincere thanks for the firm and independent support which we have received from you during the contested Poll of the last four days.—Unprepared as we were to expect any Opposition, our success on the Close of Yesterday's Poll must have astonished the whole County—It has exceeded the most sanguine expectations of our Friends, and we trust will be ultimately crowned with triumphant success; but we must anxiously solicit your continued exertions in our favour, as it is our wish that EVERY Freeholder may exercise his Constitutional Right of deciding on an Appeal, in which, not only our private ambition, but the political sentiments of this most respectable County, are involved.

We are, Gentlemen, with great regard,
Your faithful humble Servants,
JACOB HENRY ASTLEY,
Norwich, July 16, 1802. THO. WM. COKE.

The Numbers at the Close of the Poll yesterday were:

For Sir J. Astley	3079
Mr. Coke	3759
Mr. Wodehouse	3140
Majority of Wodehouse over Astley	——61 only.

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—I cannot sufficiently express my gratitude for the great and voluntary support which I have had the honuur to receive in the present contest. I came forward, at the moment, upon the earnest request of my friends, and with no other motive than that of giving the Loyal and Independent part of the County an opportunity of asserting its right to be represented.

Without the usual preparation of a Canvas, the experiment was certainly hazardous, but the event has given abundant proofs that the zeal of the Constitutional Freeholders of Norfolk required neither solicitations nor influence to stimulate their exertions.

The Majority in my favour this evening, though flattering, does not preclude the necessity of trespassing further on the kindness of my Friends. The known vigilance of our Opponents, and the uncertainty of the time to which they may choose to protract the Poll (within its legal limits) still strongly urge us to continue our activity, in order that the Triumph of the important Cause in which we are engaged may be rendered complete.

I have the honour to be, Gentlemen,
Your most obedient, and faithful humble servant,

JOHN WODEHOUSE.

Norwich, Thursday Evening, July 15, 1802.

On Saturday evening the numbers were (according to the account of Col. Wodehouse's Committee)

For Mr. Coke	4111
Sir J. Astley	3411
Col. Wodehouse	3371

Majority for Sir J. Astley——40

On Monday the Books were again opened, and the issue of this day's Poll increased Sir Jacob Astley's majority to 57, the numbers being,

For Mr. Coke	4260
Sir J. Astley	3548
Col. Wodehouse	3491

On Tuesday the strength of each party seemed to be nearly exhausted; as but 35 votes were polled for Sir Jacob Astley, 34 for Mr. Coke, and 25 for Col. Wodehouse; the majority for Sir Jacob being at the close of the Poll according to the reckoning of his Committee 117, according to Col. Wodehouse's returns 67.

In the evening a communication took place between the Committees; the result of which was, that a request was sent to the Sheriff and signed by all the Candidates, to close the Poll, reserving to all parties a right of resorting to such proceedings in relation to it as should be thought expedient.

On Wednesday morning (July 21) three Gentlemen were deputed from each Committee to assist the Sheriff in casting up the Books.

The Court having been duly opened by Proclamation, Mr. Adair, on the part of the Electors in the interest of Sir Jacob Henry Astley and Mr. Coke, demanded, "That the High Sheriff do publicly declare the numbers given for each Candidate at the late Election."

This being misunderstood by some of the friends of Colonel Wodehouse, who conceived the object of the demand to be, that the High Sheriff should declare the Candidates who had the majority to be duly elected—it was contended that, as a Scrutiny was in contemplation, such declaration was unnecessary.

In

In answer to which, it was observed by Mr. Adair, that the Court could not have cognizance of such intended requisition, no such having yet been publicly made. And that even if it had, the demand of a Scrutiny must necessarily arise from the previous ascertainment that the majority of numbers was against the party who might require it. He referred to the clause of the 25th Geo. 3, c. 84, by which the Returning Officer was directed, after the final close of the Poll, "truly, fairly and publicly to declare the name or names of the person or persons who have the majority of votes on such Poll."

Proclamation was then made, and the Under-Sheriff by the direction of the High Sheriff, publicly declared the numbers as follow:

For Mr. Coke	4317
Sir J. Astley	3612
Col. Wodehouse	3517*

Majority for Sir Jacob Astley ——95

Upon which, immediately a requisition for a Scrutiny of the Poll was delivered to the High Sheriff by the Hon. Col. Harbord, and was seconded by Mr. Calthorpe and Mr. Beeston, as electors in the interest of the Hon. John Wodehouse.

In objection to this demand, it was insisted by Mr. Adair, supported by Mr. R. P. Jodrell, Mr. Plumptre and Mr. Alderson, that the award of such a proceeding was not merely gratuitous.—That a distinction was to be taken between the granting a Poll and the award of a Scrutiny.—That, if the Election be not determined upon a view, the High Sheriff is, upon requisition, *bound* to grant a Poll. But that in the award of a Scrutiny, he has a discretion in the exercise of which he must be governed not by light or transient motives, but by principles fixed and permanent.—That it was like that of every other judicial character, a sound legal discretion—a discretion controlled by "the Law of the Land."—That the exercise of this authority was clearly and distinctly defined by the very words of the Act which invested him with it.—He was in that case, and that case alone, to award a Scrutiny in which he should "deem it necessary." This necessity upon which his judgment was to act must be manifestedly made appear.—But that the present application was uncountenanced by even the colour of evidence.—That the pretence of "bad votes upon the Poll" was not sufficient; for that, from the very nature of the proceeding, such must be unavoidably the case in every Election of the same extent—and that even for this allegation, indistinct as it was, no ground of evidence had been advanced.—That it rested in mere allegation —That this requisition did not confine itself to any particular description of bad votes, but extended to all.—That it stated no objection to any specific class of voters; but went generally to every vote upon the Poll.—That, in fact, this was an application for a second Scrutiny.—For that for a very great

* But the actual numbers for Col. Wodehouse were but 3516, there having been a mistake of one vote in casting up the Poll through a clerical inaccuracy.

part of the Election the Poll itself had been an exact Scrutiny before the Sheriff, assisted by his Counsel. The Freeholder's Oath very generally, and in some instances the Bribery Oath, had been administered; and there was not a pretence that every facility had not been given to the strictest examination, wherever it might have been required. The High Sheriff was therefore now required to do that which he had done already—*Actum agere.*

In conclusion it was contended, that the Application was unwarranted by any ground of evidence whatever—that it was unnecessary and therefore unjust.

On the other side it was contended by Mr. Cooper, that the Sheriff was responsible to the Party demanding the Scrutiny, if he should refuse to grant it when the necessity for so doing was manifest.—That in the present case, no one who had observed the manner in which the Poll was conducted, could entertain the least doubt of there having been a great number of bad votes forced upon it.—That the examination of voters before the Assessor did not in fact commence till a very great proportion of the Poll had been taken.—That even when it did commence, it was necessarily very deficient in that strictness of proof which would be required on a Scrutiny.—And that the extended number of votes on the Poll, beyond the common calculation of the number of Freeholders in the County, was alone a justification of the demand which Col. Wodehouse's friends had made.

After a short consideration, the High Sheriff declared that he felt it his duty to grant the Scrutiny demanded, from his own observation of the bad votes on both sides, and from the manner in which the Poll had been carried on.

A Counter-Scrutiny was then demanded on behalf of the Electors in the interest of Sir J. H. Astley, by Mr. Adair and Mr. Rolfe; and on the behalf of the Electors in the interest of Mr. Coke, by Mr. R. P. Jodrell and Mr. Plumptre.

Upon which, the High Sheriff declared that his wish to observe impartiality induced him, for the same reasons that he granted the original Scrutiny, to grant also the Counter-Scrutiny to the parties respectively.

Mr. Coke then addressed the Meeting—he said he wanted words to express the gratitude he felt to the Electors for the honour they had done him, in placing him with so distinguished a majority at the head of the Poll, after a secret canvass had been for a considerable time carried on against him. It proved most decidedly, that his political principles and his Parliamentary conduct met the approbation of the county. Upon those principles he had uniformly opposed the late ruinous, disastrous, and expensive War, which he had always thought unjust and unnecessary, and he congratulated the country that they had gotten rid of the late vile Administration, and its viler head, Mr. Pitt. He had been told in the beginning of the present contest, that he must not expect any support from the Yeomanry

Yeomanry of the County, who had been too much benefited by the War to vote for a man who opposed it: the contrary however was the fact; and he was of opinion, that had the War Minister been the Candidate instead of the Hon. Colonel, his majority, large as it was, would have been still larger. The Yeomanry were a race of men he loved and cherished to the utmost of his power. The circumstances of the War had made them what he always wished to see them, independent men. They were the men he looked to to stand between the people, and stem the tide of domineering aristocratical influence. He was glad the present contest had been carried on; it had shewn him what he must always remember with gratitude, the high esteem so large a majority of the County entertained towards himself; and he hoped it would teach Aristocratical power a useful lesson, that the independence of the Yeomanry of Norfolk was above either its threats or its influence.

Sir Jacob Astley said, that difficult as he had always felt it to speak his sentiments in public, that difficulty was considerably increased by the situation in which he then stood. He was at a loss to express to the Independent Freeholders of Norfolk his gratitude for the distinguished honour they had conferred on him in re-electing him their Representative in Parliament. It proved to him, that his public conduct and attention to the duties of his station, in the four years he had represented the County, had met with their approbation, and that calumnies the most foul against his private character had been treated with the contempt they deserved. Of the effect of the Scrutiny, he felt a joyful anticipation that his honourable majority would be most honourably increased.

Colonel Wodehouse began by assuring the Meeting, that the secret canvass alluded to by an Hon. Gentleman, (Mr. C.) was entirely without his knowledge, and that, until the Saturday preceding the Election, he had never solicited a single vote; that though he did not demand the Scrutiny, he thought the Gentlemen who had done so, perfectly right, as complaints had been made to him from almost every parish in the county, of the number of illegal votes polled for his opponents. He thanked his friends warmly for the honourable support they had given him. To that respectable body of men, the Clergy, he was peculiarly indebted for their exertions in his favour; and he concluded by declaring, that so highly did he prize the good opinion which he thought his numbers on the Poll fully proved him possessed of, that whatever might be the effect of the Scrutiny, he felt bound at any time to come forward when called upon by his friends.

The Court was then adjourned to the next day.

In the afternoon, Sir Jacob Astley and Mr. Coke were chaired round the Market-place; and in the evening there was an Assembly of their friends at Chapel-Field-House. Col. Wodehouse with a very large party of his friends dined at the King's Head with great festivity.

At

At the meeting of the Court on Thursday July 22, Mr. Adair on the part of the Electors in the interest of Sir J. Astley, delivered to the High Sheriff a Protest signed by himself and Mr. Rolfe, in behalf of the said Electors.

A Protest was also delivered by Mr. Plumptre, signed by himself and Mr. R. P. Jodrell, in behalf of the Electors in the interest of Mr. Coke.

After which, Sir J. Astley and Mr. Coke delivered the following Protest against the High Sheriff's determination of the former day:

To the High Sheriff of the County of Norfolk.

Whereas on casting up the Poll this day of the Freeholders for the County of Norfolk who have polled at this Election, it was declared by you that Sir J. H. Astley, Bart. and T. W. Coke, Esq. had a majority of votes above the Hon. J. Wodehouse, and a Scrutiny was demanded by two Electors for the Hon. J. Wodehouse, and granted by you, although no sufficient reason was legally or formally assigned to you for granting the said Scrutiny. We hereby protest against your power and authority to enter upon the same; and we hereby declare, that if you shall contrary to this our Protest proceed in the said Scrutiny, we do not assent to the delegation of your judicial discretion to any person or persons whomsoever, in allowing or disallowing the vote or votes of any Freeholder or Freeholders who may have polled, or whose votes may have been refused at the said Election, without our previous consent in writing. But we shall consider you responsible to us and to the said Freeholders for entering on the said Scrutiny, and for the allowance or disallowance of the said votes in case the Scrutiny shall be proceeded in.

And we hereby reserve to ourselves the right of Appeal for your decision to a Committee of the House of Commons in case we shall be so advised. (Signed)

JACOB HENRY ASTLEY.

Norwich, 21st July, 1802. *THOMAS WM. COKE.*

The Protests of the Electors in substance contained two distinct points.

1st. The necessity and consequently the legality of the Scrutiny awarded by the High Sheriff was denied.

2d. In case of the High Sheriff's actually proceeding upon the Scrutiny, it was required that he should in person preside thereat, with a denial by implication, that he had by law any power to delegate such function to any other person.

These several Protests having been entered and read,

Mr. Cooper on the part of the Electors in the interest of Colonel Wodehouse, engaged in the discussion of their merits.—He observed, upon the inconsistency of contesting the propriety of a proceeding

proceeding by the very persons who by their own requisition had made themselves parties to it. This he insisted was *blowing hot and cold* at the same time He intimated that it would be much more becoming in them wholly to withdraw themselves from a proceeding which they arraigned, and to leave it exclusively to those who were satisfied of its necessity and propriety

Mr. Adair observed, that he should have contented himself with a silent delivery of the Protest he had offered had it not been for what had been said by the Elector who had last spoken That he had often heard that the profession to which Mr. C. and himself had the honour of belonging was not proverbially famed for its *modesty*, yet he acknowledged that a more *modest* proposition than that which the Gentleman had advanced could not easily be conceived. Mr. C. wished that the Electors on this side should suffer their opponents to reduce their majority by every means in their power with perfect patience and resignation, and without any attempt to retaliate—That all the bad votes, as they were called, should be struck off from this side, but be suffered quietly to remain on the other—this indeed would be a "reciprocity all on one side." But persuaded as he was that the Poll on the other side would not be found so pure and immaculate as it was represented, however equitable the proposal might be he could not accede to it

The fact was, that the Electors in the interest of the Candidates who had the majority upon the Poll, were as it will be readily imagined, not parties to the Scrutiny by choice—they were compulsively so—they were forced into the proceeding for their self-defence; and engaged in one common cause, he felt it the duty of himself and his Fellow Electors mutually to support the franchises of each other in the contest. He deprecated that interruption of the peace of the County, which so vexatious and irritating a procedure was likely to occasion. To the credit and honour of the County of Norfolk never he believed had so sharp a conflict been carried on with more good humour, urbanity and good nature, than the Election had hitherto exhibited. He regretted that the harmony which had prevailed was likely to cease by the adoption of a measure of which those who were now the first to press it, might be the first to feel the displeasure. After enlarging for some time on this topic, Mr. Adair concluded.

The High Sheriff then adjourned the Court to Tuesday, the 27th of July, that he might consider of the Protests, and of the propriety of proceeding on the Scrutiny.

On Saturday, the 24th of July, the following Addresses appeared in the Norwich Papers:

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—The numerous and respectable names upon my Poll have highly gratified my private ambition; as they afford the most

most convincing proofs, not only that my past conduct in Parliament has met with your approbation, but that a large majority of the Freeholders of this respectable County have not been influenced by those Arts of Calumny and Detraction, which my Opponents have used for the purpose of prejudicing me in your esteem.

The Poll has been closed—a Scrutiny has been demanded, and granted—the Proceedings upon the Scrutiny are for the present suspended;—but relying upon the justice and impartiality of the Sheriff, confiding in the legality of your suffrages in my favour, and considering the objections to which the Poll of my Opponent is liable, I have no reason to doubt, that the Scrutiny, if prosecuted, will ultimately be the means of increasing the large majority of Votes which I have already obtained.—Your Rights, as well as my own, are involved in the Event of this Contest; and you may depend upon my constancy, resolution, and perseverance in asserting, and maintaining them, against every Attack and every Infringement.

Whether in a public or private situation, I shall never be unmindful of your friendly exertions; but shall retain the most grateful sentiments for the firm and manly support which I have received from you on the present occasion.

I am, Gentlemen, with great respect,
Your faithful and obedient Servant,

Norwich, July 22, 1802. *J. H. ASTLEY.*

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—My heart is glowing with the warmest and most unfeigned gratitude, while I thank you for the zeal which you have manifested in my favour, and congratulate you upon the success of a Cause, which is equally dear to you and myself.—Professions, unaccompanied by actions, may sometimes amuse the credulous, and sometimes conciliate the unfriendly. But in every appeal which I make to *your* judgment, and on every occasion upon which I solicit your support, I can, without any consciousness of presumption, challenge the strictest enquiry into the rectitude of my motives, and the consistency of my conduct.

It has, indeed, been my lot to be engaged in your service, at a very trying and perilous crisis, when the unusual state of public affairs required unusual circumspection and steadiness in public men: when the best and wisest of our fellow-subjects were exposed to unmerited and unexampled contumely: when independence was misconstrued into disloyalty; and Patriotism was branded with the odious name of Faction. But no reproaches, however poignant—no artifices, however subtle—no menaces, however clamorous, were sufficient to shake the firmness of my soul, or to deter me from discharging those duties which I owed to my Constituents and to my Countrymen,

Countrymen, as the guardian of their ancient and sacred rights.—Under the serious conviction, that Peace and Freedom are surer preservatives of civilization and good order, and surer effects, too, of morality and religion, than War with all its triumphs, or oppression under any of its disguises, I disdained to become the dupe of prejudice, or the tool of power.—Amidst the fears of many who were virtuous, and the apostacy of far *too* many who were venal, I reflected again and again, upon the pure, the temperate, and salutary principles of the English Constitution—I continued to revere those principles—I have endeavoured to act up to them, and therefore, I throw myself, without dismay, on the justice of every enlightened, impartial, and uncorrupt observer, who glories in the name of a free-born Englishman.

The protection which I have lately received from you, and by which you have rescued our common cause from the assaults of a sudden and most formidable opposition, is equally honourable to yourselves, and to me. It shews, that amidst all the struggles of party, and all the stratagems of misrepresentation, your favourable opinion of my integrity is unchanged, and that the increased difficulties with which you were to contend, have only produced a proportionate increase of ardour and energy in behalf of a Representative, who has never sacrificed your interests to promote his own—never deceived you by promises which he was unwilling to fulfill—nor stooped to the mean and mischievious practice of gratifying ambition at the expence of sincerity or consistency.

In the rank, the opulence, the well-known connections, and long tried honour of many respectable men, who have stood forth as my supporters in the present contest, my country has received a most unequivocal pledge of *their* conviction, that the measures I have uniformly and avowedly pursued, are not at variance with the *true* spirit of the Constitution, nor injurious to public security and public prosperity.

It is with peculiar satisfaction, and even pride, that I acknowledge the active and disinterested assistance which has been given me by the Yeomanry of this County—A class of men, whose pursuits are eminently useful in every civilized community—whose character has in many periods of our history been distinguished by a firm and heroic spirit of independence, and upon whose growing wealth, number, and strength, I am accustomed to reflect with the most heart-felt joy. Such, indeed, is my respect for the soundness of their understandings, and the manliness of their sentiments; and such, too, is my sense of their importance to the well-being of society itself, that in watching over *their* rights, and contributing to their happiness, I shall ever consider myself as performing one of the most pleasing and momentous duties, by which a Member of Parliament can either do credit to the choice of his Constituents, or provide for the substantial and permanent advantage of his country. It is not unknown to you, that a large portion of my own time and

attention has been employed upon subjects of Agriculture; and therefore I gladly embrace the opportunity which is now afforded me, of declaring to you and to the public, that the most splendid distinctions of title or station are, in my judgment, of little or no value, when compared with the esteem and attachment of an English Yeomanry, neither enervated by luxury, nor seduced by corruption.

You will permit me, Gentlemen, to express my earnest hope, that in adhering to the cause of Sir Jacob Astley, as my Colleague, I was justified by the steadiness which I had observed in his Parliamentary conduct, by the concern which I felt for his injured character, and by the respect which I owe, in common with yourselves, to the memory of his late father—the faithful and favourite Representative of your County, and, you will give me leave to add, a most sincere and constant friend to myself and my family.—Gentlemen, I once more thank you for your generous and spirited exertions in my favour.—I feel in them a solemn and imperious call upon my gratitude and my honour, to prove myself not unworthy of your support, and most anxiously do I hope, that by a diligent and conscientious discharge of the trust which you have reposed in me, I shall, to the latest hour of my life, retain the confidence of this large, opulent, and independent County.

I have the honour to be, with the greatest respect,
Gentlemen, your most obliged and obedient faithful servant,

THOMAS WILLIAM COKE.

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN—In offering you my most sincere thanks for your great and truly honourable support, I will not allow myself to regret that it has failed in giving me a majority of numbers on the Poll.—That failure, I am well assured, is owing, not to any deficiency of zeal or activity in my supporters—not to any disapprobation in the County at large of those principles of Loyalty, and that attachment to our happy Constitution, which ever have been, and ever will be most dear to me;—but to the influence of Arts, which I should have blushed to have seen employed in my behalf;—Arts, against which, the fair and manly endeavours of my Friends could hold no possible chance of success, and which have the most direct tendency to set the Rights of *real* Electors at defiance. When such are the means by which a Poll is diverted from it course, let it not be triumphantly said, that this Poll contains an estimate of the Political Sense of the County. Far otherwise, I trust, will be the sentiments of a large Majority of the Loyal and Respectable Freeholders of Norfolk.

The unconstitutional attack which has been made on one of the most sacred privileges of Englishmen, has determined my Friends

to

to undertake a Scrutiny;—a measure which has my warmest approbation, as it will serve to place a distinguishing mark between the legal Rights of actual Freeholders, and the fictitious pretensions of Impostors. From the large stock of information already obtained, there is every reason to believe that the attempt will be successful; should it prove otherwise, I shall still have the satisfaction of remembering the noble and voluntary exertions of my Friends, nearly *THREE THOUSAND* of whom have done me the honour of giving me their *single votes*—a proportion which, I am well assured, greatly exceeds all former example.

Encouraged by this support, I should think myself deficient both in gratitude, and in that confidence which such distinguished favors ought ever to inspire, were I not to declare that, in the improbable event of the failure of our present endeavours, I should find the highest gratification in having an opportunity of again offering myself to your service, whenever the occasion should permit it.

With the confident hope of seeing fulfilled the desires of those to whose flattering partiality I feel myself so deeply indebted,

I have the honour to subscribe myself, Gentlemen,

Your most obedient, and most faithful, humble servant,

Norwich, July 22, 1802. *JOHN WODEHOUSE.*

This Contest was sufficiently productive of those septennial attempts at wit, denominated *Squibs*; but we cannot say that in general they were exempt from the dullness and scurrility which are their usual characteristics.—For the amusement, however, of our readers, we select the following Epigrams, which were certainly amongst the happiest of these temporary productions:—

Murmurs from the Land's End.

Upon the breezes of the West,
Loud in a *Faction's* cause,
We hear these words (in wrath exprest)
Oft wafted from *St. Mawes:*

" Curse on old *Norfolk's* wayward race,
" Whom prayers nor threats can win,
" Who, to a *Noble Peer's* disgrace,
" Will have a JACOB IN."

RETORT from the EAST.

Indeed the Murmurs of the West,
Loud in a Faction's Cause;
Are now, as heretofore exprest,
Against our King and Laws.—

The Lynn and Marshland wayward race,
No sense of Right can win;
They (wedded to their old Disgrace)
Cry—COKE and JACOB IN.

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*On the Colours of the Candidates.**

The PURPLE fades, the PINK is growing pale,
Meanwhile the ORANGE glows with deeper red;
Hail to thy precious tints, rich Emblem, hail!
Lift, thro' thy foliage GREEN, thy peerless head:
O! ripening long 'midst Freedom's cheering smiles,
Green be thy Leaf, the glory of our Isles.

A REPLY.

Emblem of Honour, ROYAL PURPLE fades,
By artful practises, by Fraud laid low!
Emblem of Commerce, rich in *Tyrian* Shades,
BANISH'D from *Norwich* by her Country's Foe!
The Blush of HEALTH, by tints of PINK made known,
Grows pale, lest Virtue's Friends be overthrown,
ORANGE late glowing for Religion's Laws,
Reddens from Shame, to leave the better Cause.

FRAPPE FORTE.

These manly words, O WODEHOUSE, well 'tis known
Thy noble Fathers to their foes apply'd,
As signals used to rally round the Throne,
And England guard with patriotic pride;
Tho' PURPLE fade and PINK should die away,
FRAPPE FORTE to Wodehouse shall ensure the day.

Let Astley, Coke, and Marshland's sottish Son,
Learn that no Battle's lost till it be Won.

* Astley and Coke's, *Green and Orange*—Wodehouse's, *Pink and Purple*.

The following Letter to Mr. Coke, occasioned by his Address of the preceding week, appeared in the Norwich Papers of the 31st of July. We select it from the many Letters addressed to that Gentleman, merely because it appears to have been written with less personal acrimony and less warmth of party zeal than the others:

To Thomas William Coke, Esq.

SIR,—In offering a few Observations on an Address bearing your *Signature*, I trust you will readily allow me the same freedom of Remark which is exercised in another place, upon Speeches known to be composed by the Ministers of the exalted Personage who delivers them. Should you, therefore, discover any thing in this Letter, which

which you may deem pointedly severe, you will be at liberty to apply it, not to yourself, but to the Reverend and very Learned Gentleman, who is understood, (upon this occasion, at least) to have acted as *your* Prime Minister.

"Professions," you observe, "may sometimes amuse the credulous, and sometimes conciliate the unfriendly." I know not which of these effects is intended to be produced by your Address; but I hope, to use the language of it, I should not shake the "Firmness of your Soul," (a Compliment to yourself which at once betrays the Pen of a Friend) were I to examine rather scrupulously into the Actions by which these Professions have been accompanied. My present object, however, is merely to hazard a few obvious Remarks on that species of exultation which you manifest concerning the issue of the late Poll.

Your real claims to the support which you have received from the County, appear to me to be wholly derived from a source to which you seem, strangely enough, very unwilling to ascribe them. I mean, Sir, the local Importance and general Respectability of your Character, as a Country Gentleman. In this view, when you are considered as the munificent owner of a large accumulated Property, derived to you from a long line of illustrious Ancestors, and which you are in the habit of dispensing in modes perfectly congenial with the disposition and pursuits of the County where you reside; why would you search any further for the causes of your Triumph? The praises of Hospitality, of open and generous Manners, of Liberality as a Landlord, of Sincerity as a Friend, have never been denied to you;—yet, not contented to rest your pretensions to public favour on these popular and solid grounds, you still seek to trace in your Political conduct the foundation of your present success. Of that conduct, Sir, you will allow me to speak without reserve. I am not one of those zealous Partizans who are eager to apply the epithets of Jacobin and Republican to every Man who has dissented from the measures of Mr. Pitt and his Colleagues.—But though I am far from imputing to the Friends with whom you have generally acted any intentions to subvert the Government of their Country, or any wish to see it exposed to the Dangers of a Revolution, yet I will venture to assert, that those Friends, from some motives or other, have given their countenance to Men in whom that wish and those intentions were notorious. On the support of these Men, (whom in their hearts, as Englishmen, they could not but despise) they have not disdained to found their strength as a Party; and with their aid, they have carried on an Opposition, feeble indeed in its effects, but loud in its clamour, against those measures which Experience has now proved to have been the only means of saving the Empire from the Destruction that hovered over the whole Continent of Europe.

Besides your acquiescence in the Plans of this Party, there has been something avowedly *personal* in your hostility towards the late

late Minister, on whom you have condescended to lavish epithets which the mere warmth of political feeling could never justify. A determination to oppose this "hell-born" Minister, *right or wrong*, (which you once made no scruple to avow) is wholly at variance with that "Rectitude of Motives," and that "Consistency of Conduct" into which you have "Challenged the strictest Enquiry."

I must, for a moment, be permitted to contrast your conduct with that of an illustrious Character, in whose failure, on a late occasion, you have been pleased publicly to express some exultation. Although opposed like yourself to Mr. Pitt's Administration, and connected by similar means with the Leaders of that Opposition, Mr. WINDHAM, when he found the great interests of the Nation were at stake, did not stop to weigh the ties of a Party or a Club against his Duty to his Countrymen and his Sovereign:—he did not wait to consider whether the then slight differences of Party opinions precluded him from joining the Minister in a Cause, before which all Party Distinctions ought to have vanished,—He stood forward as the intrepid Champion of his Country's Honour;—he gave the commanding Influence of his Talents and of his Integrity to the support of Government;—and by his manly Example he powerfully contributed to rescue the Throne and the Altar from the danger which menaced them:—while the Leader of the Opposition and his Adherents shrunk from their public posts, to hold a sort of Senate of Controul in their Darling Whig Club.

That your success is not to be imputed, as you would imagine, to any public approbation of your political sentiments, is a fact, for the truth of which I would willingly appeal to many of the Gentlemen who have been the most warmly engaged in your support. And, indeed, those very sentiments have tended, in a great measure, to abridge your present triumph;—this will be abundantly proved by the small number of Col. Wodehouse's Friends who have given you their second Votes. Every one who is conversant with Elections, knows how difficult it is to prevent Men from giving their second votes, where, in so doing, they would not injure the Cause of their immediate Candidate. The trifling number of these upon your Poll ought to convince you of the unpopularity of your opinions.

To the warmth of your Friendship towards Sir Jacob Astley, I am willing to give full Credit;—at the same time, you will allow me, Sir, to hint, that there are those who ascribe to other motives the support you have given him:—they consider it as a struggle, natural enough on your part, to maintain your Influence in the County. I scorn to join in the Calumnies which Sir Jacob Astley has repeatedly stated to have been levelled at him; though of those Calumnies the Friends of Col. W. profess themselves to be wholly ignorant, except upon the Report of Sir Jacob himself. It is not with any reference to his private Character, (of which I know nothing that is dishonourable) that I have given my Vote against

against him;—it is from his general inefficiency in a public station, at a time when Firmness and Decision are imperiously demanded. Sir Jacob Astley could not in any point of view be considered as the Representative of the County;—and it was this which induced the Friends of Col. Wodehouse to call forth an offer of his Services. The manly and spirited conduct of that Gentleman has reflected as much honour upon *him*, as the unbought and unsolicited Exertions of his Friends have done upon *both*. The contest is yet at issue, and still gives every promise that the Event will crown their endeavours with success.

I am, Sir, your obedient humble Servant,

A Constitutional Freeholder of Norfolk.

On Tuesday, the 27th of July, the Court having met in pursuance of the High Sheriff's adjournment from Thursday the 22d, was again adjourned by the Under Sheriff to Thursday the 29th, as by direction of the High Sheriff, who was absent in London.

On which day, the Court met at nine o'clock, and continued waiting for the High Sheriff till eleven o'clock in the forenoon, when the High Sheriff not having returned, after some conference with the Under Sheriff, Mr. Charles Harvey, of Counsel for the Electors in the interest of Colonel Wodehouse, addressing himself to the side of the Court which was occupied by the other Candidates and the Electors in their interest, said—"I suppose you will agree to the Under Sheriff's adjourning the Court."

Mr. Adair.—"We have nothing to agree to.—Let the Under Sheriff take his own course."

The Under-Sheriff then adjourned the Court to two o'clock in the afternoon of the same day; at which hour the Court again met, the High-Sheriff appearing, attended by Fras. Paul Stratford, Esq. of the Court of Chancery, as his Counsel and Assessor.

[The delay we understand was occassioned by a difficulty in procuring post horses.]

Mr. Adair then addressing the High Sheriff, observed, that he was happy to see so near him a gentleman who, he was persuaded from the personal knowledge he had of his character, would give him both able and honourable advice.—That he had then in his hand a Protest, which he felt it his duty this day to deliver.—That he should have been happy if some gentleman among the numerous electors on his side, more competent to the task, had offered himself to the discharge of the duty imposed upon him.—It was indeed a duty equally imposed upon every elector in the same interest, and he could not therefore decline it. He desired however it should be understood, that, though it had frequently happened to him to have attended his professional duties in the very place in which the Court was now assembled, he this day, and on this occasion, appeared in no such character. He came forward as a

Private

Private Gentleman, as an Elector and Suitor of the County Court, who, with other Electors, felt himself injured in his franchise, by the delay of the return of those Candidates in whose favour he had exercised it.—He stood there as Counsel for no party—if he was an advocate for any thing, it was for the rational liberty, for the happiness of the Country, and it was from the wish of his heart to promote it, that he had voted for the two Candidates whose interest he was now endeavouring to support.

He came to offer his best advice to the Sheriff, if he would take it—if he would not, and he still thought him wrong, then to interpose for his fellow Electors and himself his firm Remonstrance and Protest. While the determination of the Sheriff was pending, the former mode could not be improper. But when he had actually decided, a Protest was the only mode by which the parties could signify their in-acquiescence; the only mode by which they could repel the implication that might possibly arise, of their agreeing to the justice of the determination, from the circumstance of their continuing in Court, after such determination had passed. It was in the spirit of this reasoning, that, though they had, upon a principle of self-defence, become parties to the Scrutiny, they had also protested against the Award of it. It was too in the spirit of this reasoning, that the Protest he had now to offer was drawn. He wished it however to be understood, that the points to which the present Protest referred were perfectly distinct and different from those which were contained in that which had already been delivered. The matters to which the present Protest had reference, were circumstances which had arisen subsequent to the High Sheriff's Award of the Scrutiny. For it was not, he would say, in his temper or character, however he might be dissatisfied with a determination, vexatiously to repeat Protest after Protest, to the same point.

He trusted he should stand excused if in the observations he had to offer, he should have the appearance of repeating himself; and he the rather persuaded himself this indulgence would be allowed him, as the learned Assessor must be supposed entirely new to the proceedings, and some recapitulation might be necessary for his information.

Of that necessity for Awarding a Scrutiny, which alone could justify the suspension of a return to his Majesty's Writ, not the slightest colour of evidence had yet appeared. It had been said, indeed by the Honourable Candidate on the other side, that there were bad votes on the Poll of his opponents; but he must observe, that besides the generality of the expression which was not capable of any pointed application, this was still a mere assertion—and though the sincere respect in which he held that Gentleman would induce him to place entire confidence in his word in any private transaction; yet he must know, that in a Court of Justice, the bare allegation of a party was not a sufficient warrant for judicial determination.

mination. But he should be told, that the High Sheriff had assigned as the very ground for his award, "the bad votes on both sides, within his own observation."—This he confessed he could not, for one, comprehend; for either these bad votes were rejected, or they were admitted—but if they were rejected, how could they affect the present election? and if they were admitted, why did the High Sheriff admit bad votes upon his Poll? Could he now avail himself of the very necessity which he had himself created, and assign that as the ground of his award which, however unintentional it might be, was in itself a palpable irregularity.

That about the bad votes, of which so much had been said, he wished also to say a word—Setting aside corrupt and dishonourable votes, which it did not become him to presume on either side, they might be considered as of two descriptions—bad for the want of assessment to the land-tax; or bad for defect of title; and it of course followed that there might be assessed votes with a defective title, and votes with a good title though not assessed; both of which would, in a legal sense, be equally bad votes. Now he would observe, that both of these descriptions of votes might have been tendered with a very fair and honest intention.—As a man could not always have an attorney at his elbow, and indeed it was not to be wished that he should, he might though he had taken care to have his land assessed, mistake his title to it; or he might, and particularly in this county, mistake his tenure; he might take that to be freehold which was copyhold.—Again, another man, though his title was indubitable, might by a neglect, certainly not unpardonable, have omitted to have had his land assessed; an omission which even in the spirit of the Act, which annulled the vote, could not be looked upon as a dishonest one.—For that Act was passed not so much to punish this neglect as to prevent occasional voting; that is, the making votes *upon the spur of the occasion* of any particular election. Thus the utmost that could be imputed to both the description of votes he had mentioned, was mistake or neglect.—Now he would ask, were such mistakes and neglects any proof that the sense of the County had not been fairly taken? Did such mistakes and neglects, perhaps unavoidable in every case of this sort, form in the present case a sufficient reason for subjecting the whole of the Poll of a populous County to a rigorous & vexatious Scrutiny? A Scrutiny of this extent, he was himself persuaded, could not have been in the intention of the Legislature, his respect for which compelled him not to impute to it so solemn a mockery of Justice as at the same time that it permitted the Sheriff to grant a Scrutiny, it should so limit its duration, as to defeat the accomplishment of its effect: a defined and limited objection to any specific class of voters must have been in its contemplation.—But whatever might have been its intention, he must conclude that the Scrutiny now demanded—a Scrutiny of the whole Poll of a County Election—was not that sort of procedure which the Legislature had meant to sanc-

tion, and the rather so, as it had already provided a tribunal, furnished with powers more adequate to its object.

Had the Scrutiny which was so pressingly urged been demanded by the interests of justice, or could it have promoted the ends of it, we must have patiently submitted to all the inconveniencies, and all the distresses of so harrassing a litigation.—But when it appeared most manifestly unwarranted by the necessity of the case, and when he reflected on the incurable dissentions it might eventually produce, he could not but deprecate it as a mischief.

Dii prohibete minas! Dii talem avertite pestem!

That with respect to the supposed operation of the Scrutiny now demanded, he, for one, was persuaded, it would have no sensible effect on the actual majority on the Poll. For though perhaps a conjecture might be hazarded, that among the "hasty levies" on the other side, a greater number of bad votes would be found than on that of the majority; yet he believed he might with some confidence predict, that at least the number of them would prove so equal on both sides, as to leave the relative proportion nearly the same as at present.

Mr. Adair proceeded in a line of argument in confirmation of the principles upon which the Protests were drawn, of which the following appeared to be the summary:—

That the actual case was not that in which the Legislature meant to allow the High Sheriff the power of granting a Scrutiny—That his Award thereon, therefore, was *ab initio* void.

That, supposing his Award *ab initio* valid, he had, by the irregularities incurred since the passing it, become *functus officio*, and put himself out of Court; for

That the first adjournment from the 22d to the 27th of July, had operated a *discontinuance* fatal to the proceeding.

That from the first moment of the High Sheriff's passing the Award, he became invested with a character; not merely *ministerial*, but purely *judicial*, of which the power of adjournment formed an essential function; and therefore,

That the power of adjournment could not be *delegated* to another, as in the instance of the Under-Sheriff's adjournment of the Court from the 27th to the 29th.

That much less could this power be *assumed* by another, as had been done by the Under-Sheriff in the adjournment of this day.

That, in conclusion, all further proceedings under the colour of an authority thus exercised, must be reputed void & of none effect.

He concluded a speech of some length, with observing, that he had not professed to cite such authorities and cases as might occur to his mind in support of what he had had the honour to offer to the patience and indulgence of the Court, perfectly sensible as he was of the learning and ability with which any omissions of his would be most adequately supplied by his learned friends.

Mr.

Mr. Adair then delivered the following Protest, which was read in Court:—

To the High Sheriff of the County of Norfolk.

The Representation and Protest of William Adair and Robert Plumptre, Esqrs. two Freeholders of this County, who have given their votes at the late Election of two Knights of the Shire, to serve in Parliament for the same.

Sheweth,—That the application for the Scrutiny made by certain Electors in the interest of the Honourable John Wodehouse, after your public declaration of the numbers on the Poll, and the majority of Sir Jacob Henry Astley, Bart. and Thomas William Coke, Esq. was unsupported by any evidence whatever of its necessity.

That the grounds upon which, in consequence of such application, a Scrutiny was in the first instance actually awarded by you, appear to have been so far from amounting in your own judgment, to that obvious and decided necessity which alone could justify your suspending the Return of the Writ; that at the time & place appointed by you for holding the said Scrutiny, you did not determine that the same should be proceeded in, but did adjourn the Court for five days; to wit, from Thursday the 22d, to Tuesday the 27th of July, for the express purpose of considering the propriety of proceeding in the said Scrutiny.

That on the said 27th July, the Court was held and further adjourned by the Under-Sheriff, to Thursday the 29th July; you, the said High Sheriff, never having been present at the said Court.

That such adjournment of the 22d July was in our opinion illegal, being made without the consent of the Candidates, as is required by the Statute of the 7th and 8th William and Mary, c. 25.

That the said Meeting on the 27th July, was also in our opinion illegal, being held before the Under-Sheriff alone, to whom in proceedings upon a Scrutiny, no power or authority whatever is given by the Law of the Land, or can be delegated by a High Sheriff to do any one judicial Act; and because the Statute of the 25th of the present King, c. 84, empowers the High Sheriff alone to proceed on a Scrutiny; and that the said adjournment then made was also in our opinion consequently illegal.

We therefore, the undersigned, protesting against the aforesaid Scrutiny, because the demand was not supported by any evidence of its necessity, protesting against the first mentioned adjournment of the 22d July, as being made without the consent of the Candidates; and protesting against the last mentioned meeting and adjournment of the 27th inst. being contrary to law,—Do demand, that you, in compliance with the exigency of his Majesty's Writ to you directed, do forthwith make a return of Sir Jacob Henry Astley, Bart. and Thomas William Coke, Esq. the persons upon whom it appears from your own declaration of the numbers on the Poll, the election has fallen,

Mr. Harvey, in answer to Mr. Adair, observed, that he had considered himself, when he first came into Court, attending in his professional character only, as Counsel for the Freeholders in Col. Wodehouse's interest, who had demanded the Scrutiny—in that character, he thought his attendance on that day, would have been confined merely to the time necessary to discuss and arrange certain regulations and orders by which the proceedings of the scrutiny were to be conducted—he felt himself, however, called upon, by the observations of his learned and respectable friend, to make a few remarks on the very novel and extraordinary positions which the Court had just heard; positions to which he could not assent, no more than he could to the doctrine which they were meant to establish, or to the consequences which were to be deduced from them.—Whether the Scrutiny was properly or improperly granted, was a point not now to be discussed; it had been determined already by the Sheriff, after serious argument and mature deliberation; no new facts had been disclosed, which could induce the Sheriff to alter his opinion & to stop a proceeding *in limine*, which he had before deemed adviseable.—One position laid down by his learned friend, that the High Sheriff was bound, before he granted a Scrutiny, to state his reasons and the necessity for granting it, he begged leave to deny; the High Sheriff was bound to give no reason for the exercise of a discretionary authority imposed on him by an Act of Parliament. But could any one doubt the motives and reasons which influenced the High Sheriff, on the present occasion, to institute an enquiry into the legality of the Votes of the late Election? would any one venture to say, who had been present and witnessed every thing which had passed at the late Contest, from its commencement to its conclusion, that such an enquiry was unnecessary?—Mr. Harvey then entered into the circumstances which had occasioned the friends of Col. Wodehouse to demand the Scrutiny, and took an able and comprehensive view of the proceedings at the Poll—he animadverted on the irregular manner in which the Poll had commenced, and had been continued for the first three days, without the usual attendance of the Clerk of the Peace with the Duplicates of the Land-tax Assessment; or if the Clerk had attended, such Duplicates had never been resorted to, to ascertain the Rights of Voters—though the Candidates who had obtained a majority at the conclusion of an Election so conducted, might be perfectly satisfied, neither the Sheriff nor the County at large could—Mr. Harvey then, in justification of the Sheriff's conduct, adverted to the Oath prescribed by the Act, to be taken at the beginning of an Election; and asked very pointedly, when by that Oath the Sheriff was sworn to return the majority on the poll, after the declaration of the numbers, whether such majority must not mean a majority of persons having a legal right to exercise their franchises; the High Sheriff, in preference to making a hasty return, submitted to the fatigue of what

what must necessarily be a long and tedious enquiry, for the sole purpose of satisfying his conscience, and preventing the county being imposed on, either by fictitious or illegal Voters. In so doing he should think him defending and supporting, not violating or infringing, the rights of the Norfolk Freeholders.

The endeavour which had been made to convert the Poll into a Scrutiny, however ingenious, must fail of its effects, because the Legislature had itself made a manifest distinction between them—they had in the very statute which Mr. Adair relied on in one part of his argument, defined them as distinct and separate terms; they therefore could not, on any occasion, be synonimous.

After stating this, Mr. Harvey said that he was fully prepared, from the instructions which he had received, to prove, by a series of important facts, that this measure had been rendered highly necessary by the steps which had been taken to secure the Election of Sir Jacob Astley and Mr. Coke. He did not mean to ascribe any of those proceedings to the immediate agency of either of the Candidates, both of whom he knew too well to impute to their advice or direction any act, which in its remotest tendency, could justify fraud and imposition; they were both guided by too high a sense of honour to give their sanctions to any procedure which militated against private as well as public principle; but it should be recollected that those Gentlemen, engaged as they must be in the bustle and confusion incidental to so long and protracted a contest, could not have had it always in their power to regulate, much less to controul, the too zealous and ill-judged exertions of their Agents and Partisans; even if the nature of those exertions had been previously disclosed to them.

After dwelling on this for some time, Mr. Harvey replied to the illegal objections stated in the Protest, which he considered as too insignificant to demand any long argument to expose their futility—That the application for the Scrutiny was not supported by any evidence of its necessity he would admit; such evidence could not be called for at that time; that evidence must follow the grant of the Scrutiny, not be antecedent to it.

That the *High Sheriff* had not grounds in his own judgment amounting to an obvious and decided necessity for granting it because he took time for considering on its propriety, was a very singular and forced deduction; and, if pursued to its utmost extent, would prove that what was determined, after cool and deliberate consideration was more likely to be wrong and fallacious than what was the result of a hasty and inconsiderate decision.

In regard to the illegality of the Adjournments in the absence of the High Sheriff, Mr. Harvey contended, that the High Sheriff had a right, in all cases, of delegating his authority, whether ministerial or judicial, when the occasion required it—he supposed the case of a High Sheriff being obliged to absent himself from accident or illness; would it then be contended, that the King's

Writ

Writ was not to be executed, and that the county was to be deprived of its Representation from the Sheriff's misfortune?—Such instances had occurred, and the Under Sheriff, as Deputy, had acted, and legally acted, in his room—what an inferior Officer could do, either at the beginning or in the middle of a proceeding, he could do to the end—he instanced the case of a Writ of Enquiry, executed as it usually was before the Under Sheriff, in which the judicial and ministerial character of the Sheriff was combined —in regard to the words of the Statute being imperative on the High Sheriff only, it might as well be contended that every Writ and Process from the superior Courts were equally so—they were all directed to the Sheriff, and called on him to obey the precept, and he was civilly responsible for such obedience, yet the Sheriff, perhaps, never had an opportunity of reading one of them, they were executed by the Under Sheriff and his Agents—Mr. Harvey concluded by urging the High Sheriff to proceed in the Scrutiny with all convenient expedition.

Mr. Cooper on the same side, was stopped by the Assessor, who observed, that for the sake of expedition, he should not allow more than one Counsel of each party to speak on the same point.

Mr. Adair said, he purposely waived making the reply to his learned friend's argument which might have occurred, that he might no longer delay the availing himself of the assistance of those Gentlemen by whom the Electors on the same side with himself would be represented as parties, and to whom their interests were committed with the most perfect confidence.

Mr. Alderson and *Mr. Hulton*, as Counsel for the friends of Sir Jacob Astley and Mr. Coke, addressed the High Sheriff on the same grounds as Mr. Adair, and endeavoured to illustrate that Gentleman's position, that in consequence of the High Sheriff's adjournment, and the delegation of his office, he was become *functus officio*.

The *Assessor* said, that he should take time to consider of the objections, and should therefore recommend the High Sheriff to adjourn the Court till the next morning, at which time he hoped the Counsel on each side would come prepared with proposals for the mode of carrying on the Scrutiny, in case it should be determined to proceed upon it.

Mr. Coke produced and read a Requisition, signed by himself and Sir Jacob Astley, calling upon the High Sheriff to return them, in obedience to the Writ directed to him, they having had a majority of votes upon the Poll.

Colonel Wodehouse, in allusion to what had fallen from Mr. Coke on a former day, said that he should ever be ready, either by an offer of his own services, or by supporting the claims of any other Gentleman, to assist the Electors in his interest, in resisting the attempts of the adverse party, to impose two Members on the County. He was assured that a majority of the respectable and real Freeholders of Norfolk, entertained the same political sentiments

as

as himself; and with those who opposed their right to be represented, he should ever remain at Warfare.

Mr. Coke insisted that the numbers on the Poll proved beyond dispute that the disposition of a majority of the Freeholders of the County was favourable to the political opinions of himself. He then alluded to the arts which had been industriously employed to lessen him in the esteem of the County, by insinuating that he presumed to dictate to them in the choice of a Representative; and he particularly referred to a report which had been pretty generally in circulation of his having *shaken his purse* at the Freeholders.—This he said, could not be true, for he had had no Purse since he had been at Norwich, and had lost his Pocket Book soon after he came. He was glad in having an opportunity of mentioning to a Gentleman present in the Court, (Thomas Cubitt, Esq.) that this report was said to have been spread by *him;* he was assured this was false, and he merely mentioned it that Mr. Cubitt might have an opportunity of contradicting it.

Mr. Cubitt denied having ever mentioned the circumstance alluded to, and desired to know from what authority Mr. Coke had learned this report of him. To this Mr. Coke made no answer.

Sir Jacob Astley said, that if any thing could give him a higher opinion than he had before entertained of his worthy Colleague, it would be the noble and disinterested manner in which Mr. Coke had defended him from the unmanly attempts which had been made to injure him in the eyes of the County. In reply to an insinuation that Mr. Coke had influenced his political conduct, he said, that he had never in his life had any political conversation with that Gentlemen; that Mr. Coke knew no more of the votes which he had given in Parliament than he might have learned from other sources, or by casually meeting him in the Lobby; and that he was wholly independent in his public duty, and should remain so.

The Court was then adjourned by the High Sheriff, till the next day, at eleven o'clock.

The High Sheriff attended in Court on Friday, at eleven, pursuant to his adjournment, and the Assessor delivered the determination of the Sheriff TO PROCEED IN THE SCRUTINY, in a long speech, in which he recapitulated the objections which had been made by Mr. Adair, Mr. Alderson, and Mr. Hulton, on the preceding day, the facts upon which those objections were grounded, and the substance of the Acts of Parliament which bore any relation to the question.

The principal points in which he relied in his decision were; that the Sheriff was the proper judge between the parties of the necessity of granting a Scrutiny;—that the reasons for his granting it he was not bound to explain to the Candidates or the Electors, as he was himself personally responsible for the sufficiency of them; that having granted a Scrutiny, he could not refuse to proceed in it, without

without a manifest injustice to the Electors to whom he had thought proper to grant it; that he was answerable for his impartiality in conducting it; and that, though he admitted that the Sheriff could not delegate his judicial authority, which was reposed in him individually, yet the act of adjourning the Court was merely ministerial, and such as an Under-Sheriff might perform by virtue of his general appointment, when the occasion rendered it necessary; consequently the meeting on Thursday afternoon had been legally convened.

He added, that the Sheriff was ready to proceed in the Scrutiny immediately; and on Mr. Alderson observing that the friends of Sir Jacob Astley and Mr. Coke would not be prepared to begin it for some time, the Assessor said, that he should think it the duty of the Sheriff to expedite the ends of justice, by beginning with that party which was ready, and which Mr. Harvey professed the friends of Col. Wodehouse to be.

The Assessor added, that he should continue to sit from day to day, and should then adjourn the Court till the next morning.

In consequence of the High Sheriff's determination to proceed in the Scrutiny, a large Subscription was raised on each side for defraying the Expences of it.—The sums subscribed by the friends of Sir Jacob Astley and Mr. Coke, amounted, we understand, to 9691£. 17s.—and those raised by Col. Wodehouse's friends, exceeded £8500;—sums which were much more than adequate to the charges of carrying on the Scrutiny.

PROCEEDINGS

ON

THE SCRUTINY.

THE HIGH SHERIFF with his ASSESSOR, FRANCIS PAUL STRATFORD, Esq. attended in Court on Wednesday, the 4th of Aug. 1802.

The Parties to the Scrutiny appeared by their Counsel.

For the Electors in Col. Wodehouse's interest demanding the Scrutiny,
Mr. HARVEY, Mr. COOPER, and afterwards Mr. HART.
Agent, Mr. GARDINER CHAPMAN.

For Mr. Coke's Electors,
Mr. ALDERSON, afterwards Mr. MACKINTOSH.
And in Mr. Alderson's absence during the Assizes at Bury,
Mr. WOODHOUSE.—*Agent*, Mr. W. FOSTER, jun.

For Sir Jacob Astley's Electors,
Mr. HULTON, and in his absence, Mr. MACKINTOSH.
Agent, Mr. D. JONES.

Previous to this day, it had been agreed between the Parties, that Lists of the Votes to be objected against should be exchanged three days before the objections should be heard (reckoning one day inclusive, and one day exclusive).

The Lists were in the following form:—

Norfolk County Election, 1802.

Lists of Voters intended to be objected against before the High Sheriff on Tuesday, the 17th day of August, 1802, by the Electors in the interest of the Hon. John Wodehouse, demanding a Scrutiny into the late Poll.

Name.	*Residence.*	*Place of Freehold.*	*Ground of Disqualification.*
A. B.	Norwich	Blofield	Not Assessed
C. D.	Yarmouth	Yarmouth	Do. & no Freehold
E. F.	Ditto	Ditto	Do. & disq. by office
G. H.	Blofield	Acle	Do. and Copyhold

The objection of "not assessed" was generally made against each Voter; and after the Court had determined that no fresh ground of objection should be taken against the same vote, unless notice of it should be given in a fresh List, it became the practice of all parties to make the objection of "no freehold" against *every* vote, in addition to the other grounds; by means of which, the party objecting was allowed to take advantage of any unexpected evidence during the examination of the vote, which might tend to support so extensive a ground of objection.

The Lists were signed by the respective Agents, and Copies of them delivered to the High Sheriff. The number of Objections to be delivered by each Party for a single day, was limited to 30; but the friends of Sir Jacob Astley and Mr. Coke, considering themselves as separate Parties to the Scrutiny, delivered two separate Lists, each containing 30 objections against the votes for Colonel Wodehouse.

It was laid down as a Rule by the Assessor, that one Counsel only for each Party should be allowed to address the Court upon one point or objection. This Rule however was not always strictly adhered to.

The first objection which was heard was made by Mr. Harvey, on the part of Col. Wodehouse's friends, who had first demanded a Scrutiny, and was against a joint vote for Sir Jacob Astley and Mr. Coke.

The second objection was made by Mr. Alderson on behalf of the electors who had demanded a Scrutiny for Mr. Coke, against a single vote for Col. Wodehouse.—And Mr. Hulton, as Counsel for Sir Jacob Astley, was about to make another objection against a vote for Col. Wodehouse, when

Mr. Harvey rose, to object against this course of proceeding.—Mr. H. referred to the second section of 25th Geo. 3, c. 84, and contended, that under the construction of that section, the Sheriff was bound to decide alternately on the *votes given* for the different Candidates parties to the Scrutiny, and not on the objections to be made by the parties—in other words, the alternacy was referable to the *votes* only; not to the parties objecting, nor to the voters.—Mr. H. contended, that this must have been the meaning of the Legislature in framing this particular clause for the regulation of Scrutinies; and that such a construction only would be consonant to that strict justice and impartiality which must have been the sole object of the framers of the Act in question—it meant as the duration of a Scrutiny was limited, to give parties to it, an equal and fair ground of trial during such limitation, which intention of the Legislature would obviously be defeated, if that course of proceeding was adopted, for which Mr. Hulton contended; for then it would be in the power of any two Candidates by a junction of interests, to prevent the third receiving any benefit or redress, whatever the justice of his case might be, or however well prepared he might be to de-

fend it—it would in the present instance be more particularly oppressive on Colonel Wodehouse on two grounds; first, that this assistance to Sir Jacob Astley, who was the only party against whom the Scrutiny was meant to be carried on, was given by the Candidate whose right to the return was not questioned; and he would that instant declare, that if in the course of proceeding it should ever happen that the present apparent majority of Sir Jacob Astley over Col. Wodehouse was reduced to a minority, from that moment he should abandon the Scrutiny.—The second ground was, that even the short time allowed by the Act for the continuance, had from various circumstances been curtailed to a very confined period, which must still be broken in upon by the Assizes—but without any regard to the hardship in this particular case, he should say, that if in the wording of this section any doubt could be entertained of its true meaning, it would be most politic to give it a construction which would do justice to all parties, and not one which must unavoidably do manifest injustice to the party whom he then represented.—Going back therefore to the case before the Sheriff, as connected with the law, what was it?—The Sheriff had decided already on three votes, three *distinct* votes, which votes had been given for the different Candidates, he had decided therefore according to the letter and words of the section, and therefore was bound to renew his decision in a similar manner.—One vote given for Sir Jacob Astley had been decided—one vote given for Mr. Coke had been likewise decided, and so had one vote for Col. Wodehouse—surely then *if alternacy or by turns* in the section had any meaning, a vote given for Sir Jacob Astley must next be considered.—Mr. Harvey admitted, that had not the Act limited the duration of Scrutinies, he should hardly have thought it necessary to have contended about the course of proceeding; as ultimately whatever mode might have been adopted, could the cause proceed before the same Court to a final decision, it would have been very immaterial; but it ceased to be so, when he was confined to a certain period, and in that period should be called on to defend himself against two attacks, when he could only have the power of making one.

Mr. Hulton contended, that it was the obvious intention of the Act to afford each Candidate an opportunity of objecting in turn;—and that as Col. Wodehouse's Counsel had chosen to object against a joint vote given for Sir Jacob Astley and Mr. Coke, it would be the highest injustice if they were not each of them allowed to retaliate before another objection should be heard on the part of Col. Wodehouse.

The Assesssor considered that the objection made by Col. Wodehouse against a joint vote for Mr. Coke and Sir Jacob Astley, was tantamount to an objection made against a vote for each of them separately; and he thought that the alternacy prescribed by the Act could not be complied with without allowing both Mr. Coke

and Sir Jacob Astley to object in turn against votes for Col. Wodehouse, before *he* should be permitted to take another turn. He observed, however, that as this was perhaps the first time that the present point had come in question, he should not think himself bound to adhere to his first opinion, if that of other Gentlemen in the profession of longer experience in the law of elections should be contrary to it—he was on this account desirous that the parties should agree on submitting the case to some eminent Lawyer, whose decision might be conclusive to both, and he particularly pointed out Mr. Mansfield, as a Gentleman whose opinion on every account would have considerable weight with him.

The Counsel however not agreeing on this point, the business of the Scrutiny was proceeded upon in the order prescribed by the Assessor, each of the three Candidates being allowed to make an objection in turn. In the mean time the Agents for Col. Wodehouse thought proper to take Mr. Mansfield's opinion on the course to be pursued in taking the objections.

The following is a Copy of the Case laid before Mr. Mansfield, and of his Opinion :—

CASE.

At the late Election for the County of Norfolk, there were three Candidates, Mr. Coke, Sir Jacob Astley, and Colonel Wodehouse. The numbers on the Poll were declared in favour of the two former, upon which the friends of Col. Wodehouse demanded a Scrutiny, and a similar demand was afterwards made by the respective friends of Mr. Coke and Sir Jacob Astley.

The Act of 25th Geo. 3, cap. 84, sect. 2, enacts, that "whenever "a Scrutiny shall be granted as aforesaid, (viz. by the Sheriff) and "there shall be more parties than one objecting to votes on such "Scrutiny, the Returning Officer or Returning Officers shall decide "alternately or by turns, on the votes given for the different Candi- "dates, who shall be parties to such Scrutiny, or against whom the "same shall be carried on."

It should be observed, that Mr. Coke was to all purposes a joint Candidate with Sir Jacob Astley, and his numbers upon the Poll were so high as to be far beyond the reach of a Scrutiny. Colonel Wodehouse's friends had therefore no inducement to demand a Scrutiny on Mr. Coke's Poll, and the avowed motive of Mr. Coke's friends in becoming parties to it, was to give Sir Jacob Astley the advantage which the above section appeared to hold out, of objecting to two votes out of three in course.

Should this construction of the Act be adopted, the objections of Colonel Wodehouse's friends being necessarily confined principally to the double votes given for Astley and Coke, the course of the Scrutiny would stand as under:

1st, On a vote for Coke and Astley objected against by Wodehouse.

2dly, On a vote for Wodehouse objected against by Coke.

3dly,

3dly, On a vote for Wodehouse objected against by Astley.

So that two votes for Colonel Wodehouse would be disposed of to one of each of the other Candidates.

It is conceived, that this construction, which would prove so very unfavourable to Colonel Wodehouse's interest, is founded on a misconception of the Act; and that in adopting it, the express directions to the Sheriff to decide alternately on the votes given for the different Candidates would be obviously neglected.

Your opinion is therefore requested on the above section, and the course which ought, under the circumstances, to be pursued by the Sheriff in making his decision.

OPINION.

It appears to me that the votes given for the several Candidates are to be alternately objected to; that is, one vote for Wodehouse, one for Astley, and one for Coke; and therefore when a vote given for Astley and for Coke has been objected to, it is to be considered as an objection to one vote for each, and then one of Wodehouse's votes is to be objected to; and it is of no consequence by which of the other two Candidates the objection is taken; but if Coke and Astley do not agree in objecting to the same vote of Wodehouse, the Returning Officer shall permit each to object alternately, by which means the mode pointed out by the Act, will in effect be observed; but it would be contrary to the words of the Act if Coke and Astley should be permitted each to object to a different vote of Wodehouse, when he was permitted only to object to one vote given for them.

Temple, August 7, 1802. *J. MANSFIELD.*

This opinion, on its being received by Col. Wodehouse's Agents, was shewn by Mr. Cooper to the Assessor upon the fifth day of the Scrutiny; when the Assessor thought proper to call the Counsel on all sides together, in a room separate from the Court, where it was read to them; and it was then objected against by the Counsel for Mr. Coke and Sir Jacob Astley, as being unsatisfactory, on account of its having been taken on an *ex parte* statement of the question.

On the sixth day of the Scrutiny, (which was on Thursday the 12th of August, the Court having been adjourned for two days, on account of the Summer Assizes being held in the same place)

Mr. Cooper asked whether it was the intention of the High Sheriff to proceed in the same order of taking the objections as he had hitherto done through the whole Scrutiny; or whether that course of proceeding was to be considered as *de bene esse* only until the point should be determined.

The Assessor said, that the case had been argued much at length at the outset, and that having been aware that it would be agitated, he had given it great consideration. He had undertaken to determine cases as they might arise and he had done so; but in questions of great difficulty he must have been supposed to reserve a right of re-consideration. As the clause of the Act seemed difficult

cult to be understood, he had, when it was first argued, professed that he should be glad if an opinion were taken upon it, and he had mentioned Mr. Mansfield as the oldest Lawyer, and at least as great an one as any in Westminster-hall; whose practice had been very much diversified, and who was the survivor of those great men who had argued the most important Cases of Contested Elections previous to 1780. What he had wished was, that a case should have been laid before him, and settled with the approbation of the Counsel on all sides; but this proposal not having been agreed to, Mr. Mansfield's opinion had been taken *ex parte*, and had been communicated to him certainly in the most proper manner. In consequence of this step taken by Col. Wodehouse's friends, those of the other Candidates had, as he understood, also taken the opinions of professional men of great reputation, and which were in opposition to that of Mr. Mansfield. If his first decision could be altered, it must certainly be by the weight of very great authority. And if it appeared to either party to be highly important, that he should reconsider the question, he should deem it his duty to do so. From great habits of friendship with Mr. Mansfield, and the profoundest reverence for his professional knowledge, he was certainly inclined to pay much attention to his opinion, and he had received a letter from that Gentleman in confirmation of it.

Mr. Cooper asked for a fresh argument on the question.

Mr. Alderson suggested, that it was highly indecorous to produce any opinion, or to start any objections, in argument, against a decision which the Court had already made.

The Assessor again asked the Counsel for all parties whether they would consent to take the opinion of any professional man who had not yet been consulted, to be binding upon all. But this proposal was again rejected by the Counsel for Sir Jacob Astley and Mr. Coke, who said, that they had already taken the opinions of Mr. Erskine and Mr. Wilson.

The Assessor then granted a fresh Argument, to take place on the ensuing day. And he was desirous of hearing the point argued by Mr. Cooper and Mr. Mackintosh, the other Counsel having already spoken on the question upon the first day of the Scrutiny.

The Court being assembled on Friday the 13th of August (the 7th day of the Scrutiny), a short conversation took place between the Assessor and Mr. Cooper, respecting the opinions which had been taken, at the conclusion of which the latter addressed the Court in a long and ingenious speech, of which the following is the substance*.

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* As the very able manner in which this argument was conducted by Mr. Cooper and Mr. Mackintoth, excited an unusual degree of popular curiosity, we have thought proper to give the substance of their speeches at considerable length, from notes which were taken in Court.

Mr.

Mr. Cooper began by observing, that the question upon which he had to argue, was, whether the determination of the learned Assessor, respecting the turns for hearing objections to votes, was such as the law prescribed and warranted. He acknowledged, that the obscurity which appeared to hover over every attempt to argue this point, had the effect of materially discouraging him; though, by the Counsel on the other side, it had been held to be the plainest question in the world. There were certain fundamental truths, which were admitted to be such as soon as they were uttered. Thus, it was a fixed principle of jurisprudence, that between contending parties, the scales of Justice should be held perfectly equal;—that the Judge should hold the scales, but should not assist in poising either of them; nor should either of the parties, in any Court, enjoy any advantage over the other beyond what the forms of that Court might admit of. There was no law, that in taking the Poll, the Sheriff should receive the Votes in any particular order; but if upon the Poll, the duration of which was limited, he should determine to take two votes of one party to one of the other, he would be greatly reprehensible. Here, the Scrutiny was but a continuation of the poll, and must also be determined within a fixed period. As, therefore, the Sheriff was bound on the Poll to allow the votes to be taken in their natural course, so he must on the Scrutiny determine the objections which were brought forward without bias or prejudice to either party, in the order of taking them. Before the Act of the 25th Geo. 3. c. 84, the Sheriff was bound to pursue that mode in taking the Scrutiny, which appeared to him to be the most impartial. Supposing the circumstances of the present Election had happened before the passing of this Statute, the Sheriff would then have laid down some certain Regulations, by which he would be guided; and he would have been actuated by this obvious rule of propriety; that one party should not get the start of the other by a greater length than was absolutely necessary. On the mere principles of Justice and Equity, it would have been the Sheriff's duty to prevent one Candidate from pressing his objections forward to the injury of the other's interest. It might happen, however, that in some cases the Returning Officers did not choose to obey this obvious and natural rule; and it was from the observations of instances of this kind that the Legislature thought proper to prevent the recurrence of similar abuses, by an Act which was made expressly "for the better Regulation of Polls and Scrutinies." By the 2d Section of that Act, it was provided, "That whenever a Scrutiny should be granted, and there should "be more parties than one objecting to Votes on such Scrutiny, "the Returning Officer, or Returning Officers, should decide alter-"nately, or by turns, on the votes given for the different Candi-"dates who should be parties to such Scrutiny, or against whom "the same should be carried on."

This

This clause he had read with great attention and he thought that it could not be made to assume more than two imports. A Scrutiny had been granted;—there were more parties than one objecting on the Scrutiny;—and the Returning Officer was therefore bound to make his decision on the Votes given for the several Candidates. From the perplexity which had been thrown upon the subject it should seem, that the terms had been misunderstood. The misconception which had appeared to attend the enquiries of Gentlemen of great eminence upon this subject, induced him to suppose (though he was almost ashamed of the supposition) that they had construed the words of the Act "Votes given for the different Candidates," to mean objections made by those Candidates. Of the word "alternately" the Legislature, as if they had been aware that it was liable to misconstruction, had, for the benefit of Country Gentlemen, thought proper to give a translation. But that word could scarcely be misunderstood. Dr. Johnson had explained it to mean a "reciprocal succession." But he could not suppose that it was in the power of ingenuity to raise a doubt on the meaning of the word.—The doubt, if any could be started, must be as to its application, and he should be greatly at a loss to name more than two ways in which it could be understood to apply. The first (and that for which he meant to contend) was, that the votes given for the respective Candidates should be decided upon in turns, taking a vote for each in successive order. The other mode was, that the whole polls of the different Candidates should be taken in their turns; a construction which would be highly favourable to the friends of Col. Wodehouse, who were the first to demand the Scrutiny;—but he could not entertain a hope that such would be the Assessor's decision.

Mr. Cooper proceeded to observe, that it had been suggested that there were some omissions in the clause which it would be necessary to supply, in order to give effect to the spirit and intention of it. But these defects, if any there were, could only be remedied by the power of that Legislature by which the Act had been made. The statute stood on the book and must speak for itself. A correction of it could only be allowed if the compliance with its directions were impossible; but that was not an ingredient in this case.—Perhaps in the present instance, a little irregularity in the mode of delivering the lists of objections might have tended to perplex the question. Before a Committee of the House of Commons it was necessary for each party to deliver a complete list of his objections at once. Had this rule been adopted on the present Scrutiny, there would have been less occasion for this question to be agitated. The Assessor would then probably have said that he did not choose to hear any jarring between the contending parties, as the rule was laid down and must be proceeded upon.

Mr. Cooper then referred to the course in which the objections had been first taken. It belonged to Col. Wodehouse's Counsel to make

make the first objection, and they made it against a joint vote for Astley and Coke. The Sheriff having decided upon the question raised by that objection, it was then his duty, not to decide upon another vote for Mr. Coke, because one had been already decided upon; nor upon another for Sir Jacob Astley, for one of his had also been scrutinized.—He must therefore decide upon one given for Col. Wodehouse. When this was done the course was complete. Each of the three Candidates had had a vote decided upon, and the alternate succession was then to begin.

The Sheriff should have called on Col. Wodehouse's Counsel to make another objection, which would most probably have been made by them against another joint vote for Astley and Coke. Two votes given for each of the latter Gentlemen would then have been decided upon, and another of Col. Wodehouse's should have been objected against in the next turn. In this course, he conceived that the Sheriff should have proceeded, preserving a strict equality, as far as it could be maintained by pursuing the directions of the Act.

Upon looking into the Poll Books, he observed that the voters were nearly divided into two classes; those who gave single ones for Wodehouse, and those who gave joint ones for Astley and Coke. If therefore, the two latter Candidates were allowed separately to make their objections against Col. Wodehouse's Poll, as often as he objected against a vote given for either of them, the Colonel would be in the situation of a person who in a race against time should have to run twice as far as his adversaries. In running the same length, he might have great hopes of success; but an obligation of running two miles to their one would naturally discourage him. He was indeed running upon one leg, while his opponents used two.

The Scrutiny might be compared to the examination of two heaps of money, in order to ascertain the quantity of genuine coin in each, by taking away that which appeared to be counterfeit. Here it would naturally be the duty of the parties to examine each heap with equal speed and diligence. But this course would be defeated if one of the heaps should have two owners, and they were to say, "No, we are joint proprietors of this heap, and we insist upon throwing out two of your guineas to one of our's."

He said, that for the learned Assessor he should not have thought it necessary to adopt so popular a view of the argument, but he was desirous that all who heard him should understand the foundation of the complaint which Col. W's. Friends had to make. The Assessor, in glancing at the consequences of his decision, had suggested that it could make no difference to the Colonel's interest *in the end*. Were that the case, he (Mr. Cooper) should not have thought fit to complain, for, from the information which had been received, he had no doubt of the final result, should there be time to scrutinize every illegal vote on the Poll. But if there were no other injury, the bearing which it had on the public mind would be a very serious one. The adverse party had

every evening circulated a hand-bill shewing that their majority had been increased by the Scrutiny, without adverting to the circumstances by which that increase had been occasioned. The pressure which was felt by the Colonel's friends was this; that if it were admitted (what he did not wish any one to admit) that the bad votes on Sir Jacob Astley's Poll, were only in the proportion of two to one to those of Col. Wodehouse's, yet the apparent result of the Scrutiny would be the same as it then was. The Public were evidently deluded by these daily statements, and the object of them was to depress the resolution of the Colonel's Friends to continue the Scrutiny. That effect had not been produced on the minds of those Gentlemen, for whom he had the honour to be concerned, however they must feel their spirits damped by the consideration that their measures were in a manner rendered abortive by the decision which had taken place. If the time allowed for the Scrutiny should fail to be sufficient for the consideration of all the objectionable Votes on Sir Jacob Astley's Poll, then all the previous time and investigation would be thrown away It was upon this obvious ground of eventual injury that he had taken the liberty to press the reconsideration of so very important a point.

Whether Sir Jacob Astley and Mr. Coke were originally, at the commencement of the Election, joint Candidates, and whether, having been so at the first, they still bore that connection (for the Election was not yet determined) was a question which he thought highly necessary to be ascertained. If the result of this enquiry should be that they were not joint Candidates up to the commencement of the Scrutiny, and had not appeared as such since that time, he should, without hesitation, consent that the Scrutiny should be given up. But he might venture to assert, that no person of competent judgment, used to the investigation of what passed in a Court of Justice, could have remained one hour in that Court without being ready to declare, that these Gentlemen were acting in concert. It was enough, however, for his purpose to shew, that during the Election they were connected as joint Candidates; for if they had joined themselves together in the struggle, they must remain joint in the consequences of the struggle, and should not be suffered to separate themselves at their will, merely to prevent a third person from reaping a fair advantage from their former voluntary connection. If they were joint Candidates at the Election they could not separate themselves as to the legal consequences of the Election; they could not in substance, and therefore should not in form. The denial of this connection was a sort of evasion similar to that by which a trial had once been put off, when it was stated to the Court, that a material witness had been left in a condition in which, if he should continue in it, he could not live an hour; this was true, for the person who stated it had purposely put a jug of strong liquor to the witness's mouth, and had left him swallowing it. Mr. Cooper said, he believed the Assessor had been

given

given to understand that Sir Jacob Astley and Mr. Coke had never, during the Election, maintained any joint interest. He thought, however, that the penetration of the learned Gentleman must very soon have discovered the fact to be otherwise. And for the point for which he had to contend he should simply refer to the printed Addresses of those Candidates, and the expression of "worthy Colleague" which had been so repeatedly exchanged between them in that Court; an expression which could not be considered to have any reference to their former situation as Members for the County.

Of the opinions which had been taken, however beneficial the production of them might be to his Clients, Mr. Cooper stated, that it was not his intention to say any thing, because the learned Assessor had declared that they would not be obligatory on his mind, and because, throughout the enquiry, he had endeavoured to comport himself with as much delicacy and propriety as the case would admit of.

[Here the Assessor observed, that he had no objection to the opinions being produced; and Mr. Mackintosh said, that it was his intention to lay before the Court those which his Clients had taken, not as authorities, but merely by way of argument. Mr. Cooper still thought that there would be more delicacy in suppressing them altogether.]

Mr. Cooper proceeded by observing, that if it were only an equitable question respecting property, no Gentleman at the Bar would refuse to leave it to the determination of a professional man well conversant with the points on which it depended. Of such a case, there was no one to whom he would more readily refer the decision than to the learned Gentleman to whom he had the honour of addressing himself. In the present case there were many circumstances to be taken into consideration, which, combined, he thought to render it such an one, as he should not altogether willingly leave to be determined by an Honourable Gentleman, whose opinion had been much vaunted of on the other side, though no man could make a higher estimate than he did of the great and splendid talents of that very distinguished Orator.

He had already contended, that up to the close of the Poll, at least, Sir Jacob Astley and Mr. Coke were to be considered as joint Candidates. He had understood, that Mr. Coke had gone so far, as to say that a suffrage for his Friend would be a second suffrage to himself*.—Now, as this Association had been entered into when each party was at liberty to join in it or otherwise, he must, having joined in it, be bound to continue it, at whatever risque. The present attempt to set it aside, because it suited the convenience of the party, reminded him strongly of the Fable of the Lion and the other Beasts, who had agreed to divide their prey. There the original Association was upon terms, which all the

* A Hand-bill to this effect was circulated in the first week of the Election.

parties considered to be the best for their own interests;—but every one knew what was the conduct of some in that firm. When the prey was divided, the Lion did not dispute, or affect to misunderstand the terms of the original contract, but he thought it prudent to act as then seemed to be most advantageous for himself. Now there could not have been any difference of opinion upon the Lion's conduct, amongst the Gentlemen at the Bar at that day. Had any of them chosen to support the Lion, he should presume, that they would have been either his cubs or associates, and that they would have been hooted out of Westminster Hall, by all the beasts but the Lion himself. In his power and wealth they must have trusted for their safety.

With regard to Mr. Mansfield's opinion having been taken, Mr. Cooper observed, that as the Assessor had mentioned the degree of respect, which he should think himself bound to pay to it, he (Mr. Cooper) had considered himself at liberty to take it, although the adverse party had not agreed to be concluded by its contents. In examining and settling the Case which was laid before Mr. Mansfield, he had been desirous that a misrepresentation of the facts should be most scrupulously avoided; but, consistently with that principle, it was his duty to see that nothing should be omitted which might be favourable to the interests of his employers. The only part of the case, against which a charge of misstatement could in any way be alledged, was that in which Sir J. Astley and Mr. Coke, were said to have been joint Candidates up to the Scrutiny. But if that were the fact, as he had already contended it was, and if a statement of it could have any effect on Mr. Mansfield's opinion, then it ought not upon any account, to have been omitted. However, on glancing over the Case, and suffering this statement to form a part of it, he had really considered it as a matter of no importance, one way or the other. From this opinion, derived from a source, which the learned Assessor had admitted to be that, of all others, which was most likely to remove the doubts subsisting in his mind, Mr. Cooper acknowledged that he had been led to expect fruits which had not arisen from it. He had, with some temerity, staked his professional reputation on the event of the opinion, but whatever that might have been, it was far from having been his intention that it should be suppressed; although, on the other side, it had been hinted that there might have been a concealment, had it proved unfavourable.

[The Assessor here observed, that the *possibility* only of concealing it had been suggested; and Mr. Mackintosh said, that by that remark, no imputation whatever could have been intended to be conveyed against the fairness and candour of Mr. Cooper's conduct.]

Mr. Cooper then proceeded to read the Case and Opinion, declaring, that if any of the Candidates, or even any by-stander, could say, that a single fact, stated in the Case, was false, he was ready

ready to take issue with that person, on such an assertion, though even were it so, the Opinion might be good, notwithstanding a misrepresentation of the facts, if it were founded, as in truth it was, on a point of Law, and not upon the facts so misrepresented.—*(For the Case and Opinion see pages 44 and 45).*

After the Case had been read, Mr. COKE observed, that it was not stated that *his* voters, who had also voted for Col. Wodehouse, had been frequently objected against by Sir Jacob Astley's Counsel.

Mr. Cooper replied, that this remark, if it shook any part of the statement contained in the Case, would confirm another part of it. Mr. Coke had not, in return, objected to any of Sir Jacob Astley's votes, nor indeed was it consistent that he should conduct himself in so hostile a way towards his "worthy Colleague," as he had so repeatedly termed him. Indeed, a stronger proof could not be afforded of Mr. Coke's disinterested friendship towards Sir Jacob, than one which had lately occurred; for when a name had been wanted to complete Mr. Coke's list of 30 objectionable voters, and one of Col. Wodehouse's could not be found to answer this purpose, Mr. Coke had chosen, in the most handsome and manly manner, not to object a vote for Sir Jacob Astley, but to fix on a *plumper for himself*!* Nor had Col. Wodehouse's Agents been backward in their civility on this occasion, for they had actually written to this Gentleman to entreat him that he would come and use all his energies to defend his vote against Mr. Coke's attack upon it!

Having gone through his argument, Mr. Cooper said, that he could add nothing but a very facile illustration of it. He would suppose the case of a Family of Children, who should be allowed by their Parents to partake of any amusement, to go, for instance, to a Ball or a Play, by *turns*. The rule would here be laid down on such precise terms, that the meanest attendant of the kitchen would be able to explain how it should operate. The votes on a Poll were as easily capable of an alternacy or reciprocal succession, as the children of a family would be, in the order of selection to be made of them by the supposed rule; and by the equitable construction of such a rule, the parents would think themselves bound to give back to any one of the children, the turns, which for any reason, it might have lost in partaking of these amusements. They would give it such a number of successive turns as would place it in an equal condition with the others who had had theirs out of course.

[The ASSESSOR here asked Mr. Cooper, whether, supposing that *two* of the children were allowed to go to the Ball or Play, on the same night, two of the turns might not be thus disposed of?]

Mr. Cooper allowed this to be a probable case, as one of the children might be so young, or so helpless, as to require an *older or stronger child to take it by the hand*. He then concluded a speech, which

* This mistake occurred early in the Scrutiny, and the objection was actually made in Court by Mr. Coke's Counsel, before the error was discovered by looking into the Poll.

which had lasted more than two hours, with an apology for the length of time in which he had trespassed on the attention of the Court, and with an expression of his firm reliance upon the justice of the learned Assessor's decision.

Mr. Mackintosh began by observing, that it was but to justice, both to the learned Gentleman and himself, to acknowledge that he had to encounter a most formidable antagonist, whose very elaborate argument, had been founded upon a series of plausible and ingenious fallacies, of which it might be difficult to remove the impression.—The learned Counsel seemed to have forgotten that the Court was engaged in a Scrutiny of the Freeholders of the County of Norfolk, and not in a Scrutiny into the conduct of the Counsel and Agents for Col. Wodehouse, in the steps which they had taken respecting Mr. Mansfield's opinion. He wished that Mr. Cooper had scrupulously abstained from a discussion of the measures of the parties to the contest; for himself, he had no concern whatever with the conduct of Sir Jacob Astley and Mr. Coke, or of their Agents, and he should therefore carefully avoid a reference to it, in his argument. Of the learned Gentleman's ingenious application of the Fable of the Beasts, he should say nothing, except that the confession of a Lawyer, that the members of his profession were merely Beasts of prey, struck him as being sufficiently novel;—It reminded him of Mr. Burke's Tyger, in the Lobby of the House of Commons, to whom the learned Gentleman's Lion, in Westminster Hall, might be considered as a proper rival in rapacity.—Neither had he any thing to do with Lexicography or Geometry, or any of the other obstruse sciences, to which the learned Gentleman had chosen to resort for illustrations of his arguments. He agreed, however, with that Gentleman, that there were certain propositions in law which must be presupposed and assumed in the same manner as in mathematical science; and one of these axioms certainly was that the scales of Justice should be held perfectly equal.—But it was another maxim of the same high incontrovertible nature, that every Court of Justice was entitled to presume in favour of its own judgments, and was bound to do so, though not obstinately to adhere to them, where the error was manifest. He owed it to the learned Assessor to believe, that he had not decided upon the present question lightly, nor till after a long and legal argument on the points on which it turned, for though he had not the good fortune to be present, he had no doubt but that every thing was then said by his learned and very respectable friend (Mr. Harvey) that could be said on behalf of his cause. The Assessor had from that time firmly adhered to the decision which he had actually given; but he was now called upon to arraign his own judgment with respect to the most important question which he had been required to determine since the commencement of his office. He thought it unnecessary to insist much upon the high importance of adhering to decisions when they were once made.

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The presumption against wanton, light and inconsiderate changes, was not the effect of prejudice, but of the sober and deliberate judgment of the best and wisest of mankind. It was true, that new and unavoidable arguments might sometimes arise against the determinations of a Court of Justice, but then they should be forcible enough to outweigh the great and general inconvenience of changing decisions; for it was not to be presumed that Judges, presiding in Courts, would form their determinations without previous and mature consideration. Allowing then the possibility of conceiving an argument strong enough to overcome this presumption in favour of former decisions, he should proceed to enquire whether the present case afforded an instance where the new matter was of so strong a nature as to impel the Court to a reversal of its own judgment. He should think himself guilty of great indecency if he attempted to treat the Court, which he had the honour to address, in any manner less respectful than he ought to demean himself before the first Court in the kingdom. And he should take the liberty of claiming the exercise of the Assessor's own judgment, unbiassed by the opinion of other Lawyers, however high might be their reputation; for he conceived that every Judge ought to consider himself competent to make all necessary decisions in his office; otherwise those Counsel whose opinions might be quoted and adopted, properly speaking, would be the Assessor's *pro tanto*. Any change in the former decision which might then be made would have this material inconvenience, that it would be made *pendente lite*. It would not be an alteration in the rule of decision merely referring to future cases, but it would be an alteration during one of the stages of the case itself, and must therefore admit an injustice to have been already committed towards some of the parties to it.

Mr. Mackintosh then proceeded to examine that Clause of the Statute which had come in question. There were, he observed, three familiar rules of construction which would apply to it;—1st. that it should be construed so as to forward the views of the Legislature in framing the Statute—2dly. that it should be made to appear consistent with itself—and 3dly. that it should be freed from all obscurity and redundance. It was the duty of the Court to see, that no more intricacy should be left in it than could be avoided, and to set forward on the presumption, that no redundance, no obscurity, and no error could originally have been found in it. Indeed, if any such should appear, it seemed that the presumption should be, that the obscurity existed in the apprehensions of the observer, not in the Legislature by whom the Act was framed. With these rules in his view, he should construe the clause in question to mean, that where there were two parties to the Scrutiny, the Returning Officer should decide *alternately* upon the votes of each, and if there were more than two, then *by turns* on their several objections. This he conceived to be the only reasonable construction

construction, affording all parties an equal right of having their objections heard. The meaning of the word "*alternately*" was sufficiently clear to every one, without the necessity of adverting to Dr. Johnson's explanation of it, which like some other well-known explanations of that highly eminent lexicographer served only to cloud what it was intended to illustrate. And the expression "by turns" appeared to him to have been used in this instance by the Legislature, in contradistinction to "alternately:" the latter referring to the case of *two* parties to a Scrutiny, and the former to that of *more than two*; he admitted that as applied to two persons or things, the terms were convertible, but the words "by turns" seemed to him to have been anxiously intended by the Legislature in reference to a greater number; otherwise the penners of the Statute must be chargeable with a ridiculous pleonasm. And, by imputing these several meanings, he contended that a provision would be made for what would otherwise appear as a *casus omissus*, though it must have been within the contemplation of the framers of the Act. So confident was he of the justice of these obvious distinctions, that he should defy the learned Gentleman to confound them, even with all that acuteness and ingenuity to which he was happy to bear testimony, and which he should be glad to see exerted in a wider theatre.

Mr. Mackintosh proceeded by observing, that in his construction of the Clause, he should always understand "votes" to mean the "voters," whose legal rights were the objects of the adjudication. The words "different Candidates," was clearly intended only as a repetition of the preceding words, "Parties *objecting* to votes"—The *objections* might be considered as the important parts of the Scrutiny; the defences as inferior and collateral.—That each party should have a turn of defending, as well as of objecting, was a matter of necessity, consequent on the objection, and not required to be provided for by the Act, as it grew out of the other provision. The words "parties to such Scrutiny," were used by the Legislature to preclude squabbles about joint interests, and to prevent vexatious and endless enquiries concerning the circumstances of the Election. The words "joint Candidates", had nothing to do in a Court of Justice, and perhaps had never been uttered there till on the present occasion.—It was no part of the case, he conceived, that Mr. Coke and Sir Jacob Astley had a mutual interest in each other's success—that they were bound in honour and in conscience, by friendship, or by a coincidence in their sentiments on public affairs, to support each other, and to oppose those who were adverse to them and to their views. The Returning Officer was, in fact, required to cast from his mind, all consideration, and all previous knowledge of the public or private connexions of the Candidates, and to administer justice to them equally as persons indifferent to him and to each other, except as to the matters in which in which they severally sought redress. To insist that these Gentlemen were joint

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when they wished to be considered as separate, was to compel a marriage between two unwilling parties, though themselves protested against it and the law forbad it. He hoped that the learned Gentleman had too much gallantry on the one hand, and too much law and justice on the other, to consent to become a party in promoting either of these abominable combinations.

This new principle of enquiry into connections between parties could answer no purpose, he contended, but that of consuming the time of the Court, and defeating the ends of Justice. It would furnish an additional subject for the exercise of a discretionary power, which the Laws of England were extremely jealous of reposing, even in the most important Magistrates of the kingdom. If points of so delicate a nature and so eminently liable to misrepresentation were left to the decision of Returning Officers, their minds would unconsciously be biassed and their determinations insensibly influenced, to the prejudice of the parties seeking justice in their Courts. A discretionary power can never be extended without increasing the danger of its abuse. He had not stated these observations from any view to their application to the present case, but merely as illustrations of his general argument;—and he should feel much uneasiness if he conceived that he could be thought to mean any thing disrespectful either to the Honourable Gentleman who presided in that Court, or to his learned and respectable Assessor. The very statute in question was framed to restrain the discretionary power of the Returning Officer, by providing remedies against its abuse. Nothing therefore could be more repugnant to the spirit of this Act, than the monstrous increase of that discretion which was attempted to be inferred from it.

A great deal, Mr Mackintosh observed, had been said about a supposed particular inconvenience which had resulted to one of the parties to this Scrutiny in consequence of the Assessor's decision.—But a temporary disadvantage of this nature ought not to be the subject of consideration in that Court. What was then inconvenient to Colonel Wodehouse, might at another contest be equally so to Sir Jacob Astley. General Rules must be enforced, without regard to temporary circumstances like these. But he would shew an inconvenience of an important magnitude which would result to Sir Jacob Astley from the principle which the Counsel on the other side laboured to have adopted. There were 600 votes on the Poll for Coke and Wodehouse;—it would be an inevitable consequence of this distinction respecting joint Candidates that Sir Jacob Astley could not attack any of these Voters for his opponent Col. Wodehouse, because they were also Voters for his colleague Mr. Coke. He must therefore leave the Court;—if he stayed, it would be to commit suicide, or rather to be a spectator of the dissection of his own body.

It had been said that *before* the Act of the 25th Geo. 3. there was time enough allowed to complete a County Scrutiny. But to

say that the Legislature had now confined it within a period insufficient for the purposes of Justice, was to libel that Legislature, and to charge it with abridging the legal Rights of Candidates and of real Freeholders. It should certainly be presumed, that the time allowed by the law was that which was just and sufficient, and he had never before heard it charged with being too short. The opposite sentiment he had indeed heard expressed of it in private, but he did not think it decorous to go the length of asserting it in a Court of Justice.

But on this point, enough had been said, both of law and of criticism.—He should therefore conclude by reading the opinions which it had been thought advisable to take by the Friends of Mr. Coke and Sir Jacob Astley. They were the opinions of Gentlemen distinguished in their professional and amiable in their private characters. Of the very brilliant and extraordinary talents of one of them, it was difficult to speak in terms of adequate admiration. An ornament both to the profession and to the age, by the splendour of his eloquence and the versatility of his genius, it could not be surprising that those who had the honour to call him their friend should deem it one of their proudest boasts. Of the other he was sure that his sentiments would concur with those of every professional Gentleman present in the Court, when he pronounced him a man profound in knowledge and inflexible in integrity; not less esteemed for the solidity of his professional learning, than for his ready and obliging communication of it to those who had the happiness of accompanying him on the Norfolk Circuit. But in thus gratifying his feelings by bearing testimony to the talents and virtues of his friends, he wished to have it understood, that he entertained a due sense of the great and deserved reputation of the very eminent lawyer whose opinion had been taken on the other side: however he might suspect that that opinion had been a little prejudiced by the sly and dextrous manner in which the case had been represented to him; the more dextrous, as it contained no false allegations, but only a rhetorical colouring of the facts which served to engage the virtuous and honourable feelings of the learned Barrister in favour of the cause it was intended to support, before he came to consider the point of law on which the question turned. The original impression thus made might be so difficult to eradicate, as to give a bias to all his future opinions on the subject.—He should read the opinions, not on account of the weight of their authority, but of the strength of their reasoning.

THE CASE.

At the close of the Poll, and on declaring the numbers for each of the three Candidates, at the late Election for the County of Norfolk, a Scrutiny was demanded by two Electors, in the interest of the Hon. John Wodehouse, who was the Candidate, having the fewest numbers on the Poll; which having been granted, two Electors, in the interest of Sir Jacob Henry Astley, next demanded a Scrutiny on behalf of that Gentleman, which was granted; then

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two, in the intereſt of Mr. Coke, demanded one in his behalf, which was alſo granted.

The proceedings upon the Scrutiny, commenced by the Counſel, for the Honourable John Wodehouſe, objecting to a vote for *Coke* and *Aſtley*, which having been determined to be bad, the Counſel, on the part of Mr. Coke, then objected to a vote given for Mr. Wodehouſe; this having been decided to be bad, the Counſel, for Sir Jacob Aſtley roſe, to object to a vote given for *Coke* and *Wodehouſe*; but this order of proceeding, was oppoſed by Mr. Wodehouſe, on the ground of its being contrary to the conſtruction of the 2d. Sect. of the 25th Geo. 3d. Chap. 84. It was urged, on the part of Sir Jacob Aſtley, that there was no reciprocity in the proceeding, if he was not to be at liberty to controvert Mr. Wodehouſe's votes in his turn, as well as to defend his own. And it was urged by Mr. Coke, that if Wodehouſe objected to voters who had voted *Coke* and *Aſtley*, and Aſtley objected to voters who had voted Coke and Wodehouſe; in the courſe of the Scrutiny, his majority, or that of any other perſon, in his ſituation, might be loſt.—Upon hearing the arguments on both ſides, the Sheriff over-ruled the objection, and decided that, as there were *three parties*, each demanding a *Scrutiny*, they were to be heard by turns, on the votes objected to by each. Doubts, however, having ariſen on the part of Mr. Wodehouſe, reſpecting the propriety of this deciſion, your Opinion is requeſted on the following Queſtion:—

WHETHER the order of proceeding adopted in conſequence of the deciſion of the Aſſeſſor, namely, that of each of the above mentioned parties ſeparately and by turns bringing forward objectionable votes for the deciſion of the Sheriff; or that contended for on the part of the Hon. John Wodehouſe, namely, that Mr. Coke and Sir Jacob Aſtley ſhould be conſidered as one Party, and ſhould bring forward only one objectionable vote between them, to one brought forward by Mr. Wodehouſe, be agreeable to the true conſtruction of the 3d Sec. of the 25th Geo. 3d, cap. 84?

Mr. ERSKINE's OPINION.

Nothing can be more perfectly clear than that the deciſion of the Sheriff's Aſſeſſor is juſtified by the Act of Parliament which regulates the proceedings under Scrutinies.

The Act was intended to limit their duration; and it became therefore neceſſary to point out ſome mode of proceeding, by which none of the Candidates might be injured by an unfiniſhed Scrutiny cut off in its progreſs by the efflux of the time limited by law; and this could only be done when there were more than two Candidates, by allowing them to object in their turns.—Of courſe no Candidate will object to his own votes, but no Candidate has a right to claſs the two other Candidates as in the ſame intereſt and to conſider them as one. Each Candidate has a right to object for himſelf, and to have his turn in the objection.

T. ERSKINE.

Portugal-Street, Lincoln's Inn Fields, Auguſt 10, 1802.

MR. WILSON's OPINION.

The firſt Queſtion put to me is "Whether the mode adopted by the Sheriff of permitting each party to the Scrutiny (there being more parties than one objecting, viz. three) to object to a vote in his turn, be that enjoined by the 25th Geo. 3. c. 84. p. 2.?"

In putting a conſtruction on the Clauſe of the Statute, it is neceſſary to lay aſide the particular circumſtances of this Election.—The conſtruction muſt be the ſame, whether there be or be not any ſuppoſed union of intereſts, which cannot have been in the contemplation of the Legiſlature, and is not the ſubject of legal argument, and whether there be or not ſuch a ſuperiority of Votes as to make any one Candidate in the general opinion ſafe.

All the three Candidates are *parties* to the Scrutiny, and it is carried on *againſt* each.—The word *alternately* ſeems uſed for the caſe of the two Candidates, *by turns* for the caſe of more.—Each Candidate may have ſingle Votes, and where the Voter has voted for two, there may be three different combinations.

The Act ſays, the Sheriff ſhall decide alternately on the *votes*.—But if a Voter's votes for two Candidates were to be conſidered as making two votes, it would follow, that he muſt be twice objected to, and twice argued by different parties, and twice decided on.—Alſo a Candidate objecting to ſuch a Voter muſt be held to have made two objections, which the Clauſe does not permit him to do.—I therefore think the word *Votes* in the Clauſe muſt be taken to mean *Voters*, and the Sheriff muſt decide alternately, and by turns, on the Voters for each Candidate.

It is impoſſible for the Sheriff himſelf to go through the Poll in this manner. He muſt wait for objections from the parties, and I think the mode he has adopted of permitting each Candidate to object to a Voter in his turn, is agreeable to the meaning of the Statute.

In a caſe where the Candidates were all thought adverſe, and the numbers were nearly equal, I cannot think that this courſe would have been doubted of, and it is impoſſible that any ſuppoſitions of the contrary can enter into a legal argument on the conſtruction of a ſtatute.—The Scrutiny has been demanded by all, and neceſſarily granted to all, and the Sheriff can know nothing more.

The ſecond Queſtion is,

"Whether it be competent to the Parties who have already objected to a vote "for one cauſe of diſqualification, which has been decided in favour of the "voter, to make a freſh objection (giving the regulated notice) to the ſame "perſon for ſome other cauſe of diſqualification."

Independent of any agreement among the Parties, I think the *deciſion* meant by the ſtatute is a general deciſion whether the voter was good or bad—Conſequently that all the objections muſt be made at once, and if not made are loſt. A contrary conſtruction would lead to great inconvenience and delay, as the ſame voter might be objected to as often as there are cauſes of diſqualification.

GEO. WILSON.

Norwich, Auguſt 10, 1802.

I am more and more convinced, that the conſtruction put by the Sheriff on the Clauſe is the true one.

"For the ſame intereſt" is a looſe phraſe which muſt be defined—If mere good wiſhes are not enough, it will be neceſſary to fix what degree of aſſiſtance ſhall conſtitute an identity of intereſt. This will be attended with great difficulties, and I think nothing will do ſhort of conſidering two of the Candidates as one to all intents and purpoſes; in other words, that there are but two Parties to the Scrutiny, Coke and Aſtley, and Wodehouſe.—The numbers and particulars of the votes ſufficiently diſprove this.—But ſuppoſing it decided, obſerve the conſequences.

It muſt follow that Coke and Aſtley being one, cannot object to each other's votes.—They cannot object ſeparately, no objection can be made for Aſtley againſt a vote of Coke's, nor even againſt a voter for Coke and Wodehouſe, becauſe that would deſtroy a vote of their own at the ſame time.—But Wodehouſe would be at liberty to object to votes for Coke and Aſtley, as well as to the ſingle votes for each of them.—This involves ſo much injuſtice as well as abſurdity, that I cannot think it was the meaning of the Legiſlature.

GEO. WILSON.

Mr. Cooper, in reply, held himſelf under great obligations to the learned Gentleman for the manner in which he had argued the point, and for the very handſome compliments which he was pleaſed to confer upon him. *Laudari à laudato* was certainly the more acceptable of all praiſe. The learned Gentleman, he obſerved, after affecting a profound reſpect for the Legiſlature, had made

made an attack upon it not very consistent with his professons. He had complained of the discordant union which had been attempted between law and mathematics, but he had himself gone further;—he had combined law with theology, by setting out with a presumption, that all laws were perfect, a position which could only be true when applied to the ordinances of that power who governed the Universe. After this, however, he had contrived to make out the very law in question to be so extremely imperfect as to require a string of strange alterations and interpolations, before it could be at all understood: and this too after having laid it down as an axiom, that no law, however obscure or inexplicable, could be altered, except by a power equal to that which had made it. The learned Gentleman's substitution of "Voter" for "Vote" was not grammatically accurate; the objections did not lie personally against the Voter, but against the Vote which he had given. It had been contended by Mr. Mackintosh, that we ought not to look for obscurity in the Acts of the Legislature, yet the Statute in question he had admitted to be so obscure that nobody could understand it, without making interpolations to serve as a clue to the sense.

With respect to the learned Gentleman's grammatical discrimination between the words "*alternately*" and "*by turns*" it was not to be supposed that the Legislature was likely to affect so precise a phraseology, and to intend such nice distinctions in the construction of their words, especially in an Act where it was insisted, that many necessary words had been wholly omitted, and others used in a sense very different from their meaning. The blunders which had been charged upon this Statute reminded him of a celebrated one against dog-stealers, which directed the culprit to be whipped, but allowed him *after* punishment to appeal to the next quarter-sessions. Mr. Cooper then proceeded to shew by a series of philological and familiar observations, that there was no real ground for the distinction attempted between "alternately" and "by turns" and that in fact the latter words were only used in *explanation* of the former, as being more in popular use.

An allusion had been made to a point which, for reasons of a delicate nature, he thought would not have been mentioned; all that he should say on that subject was, that next to the praise which belonged to the perfection of not committing an error, was that which was due to the merit of retracting one. Mr. Mackintosh had said, that he (Mr. C.) had laboured to make the question turn wholly on the point, whether Sir Jacob Astley and Mr. Coke were joint Candidates, or otherwise. In this he was not correct, for Mr. C. thought that it did not signify at all whether they were or not. He had not attempted any *marriage* between the parties —it was rather his wish to *divorce* them. It was *they* who had chosen to connect themselves; the public did not think it an equal match; and though there was a great deal of money on one side, their father (the county) did not much approve of it.

Mr.

Mr. Cooper closed a long reply by an ingenious commentary on the opinions of Mr. Erskine and Mr. Wilson, examining them sentence by sentence, and endeavouring to shew, that they coincided with the opinion which he had been all along labouring to maintain. At the same time he passed many compliments on the talents of the Gentlemen who had thus been consulted.

The Assessor postponed his decision till the Monday following.

Monday, August 16.—The Assessor, in pronouncing his decision, said, that he had been much gratified by the second argument, which had tended to remove a good deal of the difficulty that had subsisted in his mind. He was happy in bearing testimony to the depth of learning and force of eloquence displayed by the learned Gentlemen, and which was such as would in any Court have reflected the highest credit on the most experienced advocates.—He trusted that Mr. Mackintosh would excuse him if he considered that what had been personally addressed to him as Judge of the Court, required his very serious attention. The learned Gentleman had bestowed a very flattering share of commendation upon him, apparently with a view of putting him in good humour with his first opinion. *Laudari à Laudato* was certainly amongst the highest of gratifications; but he should neither be enticed by commendations nor appalled by threats from pursuing what he considered to be his duty. It had been urged that the decision had been made with mature deliberation, after elaborate arguments, and that a reversal of it would shew want of confidence in his judgment, derogatory to the dignity of his character as a Judge;—in other words, that by so doing, he might be considered to stultify himself. But he thought that the doctrine of *stare decisis* was carried too far when it excluded appeal, or the re-consideration of a judgment, occasioned by the novelty or difficulty of the Case.—And no man could justly be said to stultify himself who should think it necessary to correct an opinion from the effects of a more ample examination of the subject, aided by the experience and Counsel of others. If that were the case, there never was a Judge in Westminster-Hall who might not be said to have stultified himself in some of his judicial acts.—Indeed the learned Gentleman seemed only to have flung out these arguments in aid of his spirited remonstrance, without calculating much from their effects, for he had afterwards observed, that *cogent reasons* only should induce an alteration in the decision in question, by which he admitted, that if there were any such cogent reasons, the decision *ought* to be altered. Amongst those qualities which were principally required in a Judge were integrity of mind;—sufficiency of ability to determine between what was right and wrong, legal and illegal; and firmness. For possessing some share of the two first requisites, he hoped he had obtained some credit from the flattering situation in which the High Sheriff had done him the honour to place him.—In the latter, he trusted that he should not appear deficient by being deaf both to praises and to threats.

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The Assessor then proceeded to read the Clause in question, the construction of which, according to the decision which he had already made, as applied to the present Scrutiny, allowed each of three Candidates a right to *object* a vote in turn. Mr. Cooper had denied the justice of this construction, on the ground that Mr. Coke and Sir Jacob Astley were joint Candidates at the Poll;—that having been so they must continue joint during the Scrutiny, which was but a continuation of the Poll;—that whenever Wodehouse objected to a vote for Coke and Astley, they, in return, should *jointly* object to one *vote only* for Wodehouse;—and that the alternacy deferred to the order of deciding upon the *votes given for* the different Candidates; not upon the *objections made by* them. On the other hand, Mr. Mackintosh had argued, that the Returning Officer should decide on the *objections made against* the *voters*, who had voted, reading, with Mr. Wilson, *voters* for *votes*. He agreed with Mr. Mackintosh, that in construing Acts of Parliament, it should be endeavoured to give sense to every word. But did the Statute in question afford the means of so doing? There could be no doubt that the object of the Act was, that all parties should, as far as the nature of the proceedings would admit, proceed equally, without preference shewn to one or more above the others. If Sir Jacob Astley and Mr. Coke were really but one party, then there were but two parties to the Scrutiny, and the question, as to the mode of proceeding, would be at an end. But if they were distinct parties, then the construction of the words must be considered, and he was inclined to think, that Mr. Cooper's arguments went a great way towards shewing that the words "*alternately*," and "*by turns*," meant the same thing, and that "or" was used only as a *videlicit* to explain the former; that it should not be considered as a disjunctive, but that the true reading should be "alternately *scilicet* by turns." This Case, however, was not to be governed by verbal criticism; that was certainly the best construction which was likely to meet the greatest number of cases that might arise. The Act was intended to meet Cases where there were two Candidates, and where there were more than two; but the difficulty was confined to the latter Case, and even there only when two of the Candidates joined against a third. In order to meet the circumstances of the present Case, he should adopt a Rule of Proceeding, which would leave Sir Jacob Astley and Mr. Coke, at liberty to consider themselves either as joint or separate Candidates, and which would place Col. Wodehouse in a situation to defend himself, in which ever mode his opponents might choose to act:—

COPY OF THE RULE.

"A vote for Col. Wodehouse—a vote for Mr. Coke—a vote for "Sir Jacob Astley, shall be objected to, in turn successively—If "either of them takes an objection to a vote which has been given "for the other two, though it is aimed against only one of them,

"it

" it is to be considered as an objection against a vote for each of the " two, and then an objection is to be taken to a vote of him who " has so objected.

" As to the order to be observed with respect to the Persons taking " the objections—Coke and Astley, (if they do not join in their " objections to Wodehouse's votes) are to take it by turns when an " objection is to be taken to Wodehouse's votes; and so Wode- " house and Coke, (if they do not join) are to take it by turns to " object to Astley's votes, when in turn they are to be objected to; " and in like manner Astley and Wodehouse with respect to the " votes for Coke, when his votes are in turn to be objected to."

When the Assessor had concluded, Mr. Alderson requested an adjournment for two hours, in order that the Counsel for Mr. Coke and Sir Jacob Astley might have leisure thoroughly to comprehend the mode in which the proceedings were to be continued under the new Rule.

The Court being again opened, *Mr. Harvey*, addressing the High Sheriff, said, that in consequence of the Rule to be now adopted, he claimed on the part of Col. Wodehouse to take as many turns of objection against votes given for Sir Jacob Astley and Mr. Coke, as the former decision had deprived him of. And that neither of them should have a right to object to any votes for Col. Wodehouse till he had received the turns of which he had been deprived.

Mr. Alderson observed, that the motion would come more regularly before the Court after the first objection had been made.

Mr. Harvey then objected against a joint vote for Coke and Astley, and on its being decided upon,

Mr. Alderson rose to make an objection on the part of Mr. Coke.

Mr. Harvey refused to take this objection.

Mr. Alderson then said, it appeared to him that the Assessor, after having given one meaning to the word "*alternately*," was now called upon to give another; and that instead of *one* turn, the Counsel for Mr. Wodehouse now wanted *eighty-seven*. He was at a loss to guess how his learned friend's ingenuity could support so preposterous a demand. He should rest on the words of the Act, and did not see how the High Sheriff could be authorised to depart from its directions, and to re-examine votes which had already been decided upon.

Mr. Hulton said, he was not sure that Mr. Harvey's motion was understood by the Assessor. Its purport was contrary to the words of the Act, and contrary to that construction of it which Colonel Wodehouse's friends had all along contended for.

Mr. Harvey maintained, that there was no injustice or illegality in the claim which he had made. Wherever an injury was sustained by the decision of a Court, it was just and necessary that that Court should redresss it. It seemed to him that Mr. Alderson had wholly mistaken the ground and purpose of his application. He did not call

call for a construction of the Act, different from that which the Assessor had then given.—He asked only for the fair and equitable effect of that construction. If the original determination was founded in error, and Col. Wodehouse had been a sufferer by its operation, was it unjust or unreasonable in him to demand a restitution of his loss? In every case where a Court is competent to afford redress, it is bound not to withhold it. Mr. Alderson had asked whether it was proposed to resume a Scrutiny into the Votes which had been already decided upon.—Certainly not;—no such absurdity could be required. Where injury was manifest, the Court was bound to give redress; and that it was manifest in the present instance every impartial observer must readily pronounce; for if the friends of Col. Wodehouse had had the opportunity during the whole Scrutiny of taking their turns according to the effect of the rule which had at length been laid down, a much greater number of Votes of the adverse party must have been struck off the Poll. And if this redress were withheld from Col. Wodehouse, he would be in a worse situation than if the rule first adopted had been silently acquiesced in, from the loss of time which had attended the discussion, and the very limited duration of the Scrutiny. To shew the great injustice which Col. W. might sustain if his present claim were refused him, Mr. Harvey supposed the case, that at the last minute of the Scrutiny Sir Jacob Astley might have a majority of but five votes.—Here it would be apparent, that this could not have been the case if what was now admitted to be the legal construction of the Statute had been adopted at first, and by which, in the case supposed, Mr. W. would have been placed in a majority. The injury here would be no less than the loss of the Election. He illustrated his arguments by putting the case of three servants offering themselves for hire, out of which two were to be chosen;—one of them being fixed upon, he supposed that the other two were set to perform some probationary services, and that the servant already hired should choose to give his help to one of these other servants, by which assistance his work might be completed in half the time required by his rival. Would not the servant who should not receive this help, have good reason to complain of the unjust preference given to his opponent?

In fact, Mr. Coke and Sir Jacob Astley could not by the operation of this retributive justice, be placed in a worse situation than they would have been in, had the Rule been originally adopted.—The ground upon which Col. Wodehouse ought to have stood at first, he had a right to stand on now;—this was the first moment that he could get upon it, and the moment that the Court told him that it was his ground, he had a right to get upon it. Mr. Harvey concluded by observing, that he had not considered the point much at length, with a view to argue it as it might be argued—for indeed, he had hardly thought that it could have admitted of a dispute. The claim he had put in was so just and equitable, that he had not believed that his learned Friends would have given him any trouble concerning it. He had only to state it as the shortness of

the time would admit of, but he trusted that he had said enough to convince the learned Assessor, if that were required, of the just right of Col. Wodehouse to be now placed upon that footing on which a contrary decision would at first have placed him.

Mr. Alderson observed, that it had been stated by the Assessor, that whatever mode was adopted, no injustice could be done to any party. It ought to be taken for granted, that the Law had allowed sufficient time for going through the Scrutiny, and it was not yet known whether it would not be completely gone through.—If it were, then no injury would be done to Col. Wodehouse.—But even if he had sustained any, would it be right to give him the down-scale now? The first Rule had been recognized, and the Assessor was bound by it:—he could not now adopt a Rule of equity of his own, to correct the effects of his decision. He supposed the case of a penal Statute, upon which a variety of actions might have been brought, verdicts obtained, and penalties recovered, because the Judges had, for a number of years, put a certain construction upon it;—but that at last it should be found that this construction was erroneous. Would it be in the power of the Courts to reverse these unjust and ill-gotten verdicts? Certainly not;—they must remain, though the future decisions would be contrary to them. Admitting that the first construction of the Clause, in question, was wrong; still it was the Law of the Land, while it was held by the Assessor. The contest was now beginning afresh;—it was like the granting of a new trial, and henceforward all parties must proceed upon the new construction only. To give what was demanded, would be like giving double costs to the party to whom the new trial was granted.

Mr Hulton said, that it could not be denied that where the Court had committed an injury to any party, it was bound to grant him redress;—but it must be such redress as the Law allowed. The Assessor was bound to be guided by the Act, and could not deviate from the course which it prescribed. If Col. Wodehouse had sustained a disadvantage at first, and the Assesssor should think himself justified in redressing it, he ought only to be allowed to take back his turns, in the same course as his opponents had before taken theirs, viz. by two turns to one, till he had recovered his lost ground—not 80 turns to none, as was demanded. But, in fact, the Court had no authority to proceed in any other course than "alternately, or by turns," as the Statute had directed.

The Assessor said, that to the Rule which he had delivered to the Counsel, he should have added, that if Col. Wodehouse had sustained any injury by the former construction of the Act, he should receive redress. If a Court acknowledged its former decisions to be wrong, and means were left to set them right, that surely ought to be done. The new Rule must be considered as having been made the first day, and the parties should therefore be put in the same state as they then were. He considered the transaction to be in the nature of an account which was always open to have its errors rectified before its being settled and allowed between the parties, and even after settlement, the party injured by an error might be let in

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to surcharge. He thought the mode of restitution mentioned by Mr. Hulton, by allowing Col. Wodehouse's Counsel to make two objections to one till they had recovered their lost ground, was very fair and reasonable, but he should not press it upon them.

Mr. Harvey said, that he should not think himself justified in consenting to take back the lost turns in any other way than by making the whole number of objections in an uninterrupted succession.

Mr. Adair then delivered a Protest signed by Mr. Plumptre and himself, on the behalf of the Electors in the interest of Sir Jacob Astley and Mr. Coke, against the adoption of the new Rule.

After the Protest had been read by *Mr. Alderson*, tendered an objection to a vote for Col. Wodehouse, which *Mr. Harvey* said he did not think himself bound to defend.

This occasioned a debate of some length, the particulars of which we conceive would now be very uninteresting to our readers. After which, at Mr. Alderson's request, the Court was adjourned till the next morning, in order to allow time for the Counsel for Sir Jacob Astley and Mr. Coke to determine what measures they should pursue with respect to the new Rule.

Tuesday, August 17.—The debate concerning the Restitution of the lost turns, and the mode in which they should be given back, was resumed and continued for a considerable time.

The Assessor said, that it would have given him great satisfaction if the Counsel for the respective parties could have accommodated this point amongst themselves. As that was not the case, he had no difficulty in saying that the Scrutiny must be set right. It was the duty of all Courts to correct what was erroneous or incomplete, and the Counsel for Col. Wodehouse must proceed till the alternacy should be made perfect from the beginning. He had reconsidered his decision, and was perfectly satisfied with its legality.

An objection was then made by *Mr. Cooper* against a joint vote for Coke and Astley, and the Counsel for those Gentlemen refusing to defend it, the Assessor inspected the Land-Tax Rate, and finding that it did not contain the name of the voter, he directed it to be recorded as a bad vote. After which, formal tenders of objections were made by Mr. Coke's and Sir Jacob Astley's Counsel, without any defence from the other side.

The number of turns which Col. Wodehouse had a right to recover as against Sir Jacob Astley, exceeded the number as against Coke and Astley *jointly*, by *seven*—from these, however, no advantage could be derived, through the want of plumpers for Sir Jacob in the Lists of Objections which had been delivered.

The remainder of the Scrutiny was carried on without accommodation on any side. The Counsel for Sir J. Astley and Mr. Coke refused to be bound any longer by the lists of objections which had been exchanged. They even proposed to make their objections immediately out of the Poll, without any previous notice, but

it was at length settled, that the lists, in future, should be delivered to the Assessor, who handed them to the defending parties.

The accommodation which subsisted in the early part of the Scrutiny, of allowing the defending party to call the vote for which his defence was ready, was also put an end to on the same side. This occasioned the greatest inconvenience to a considerable number of voters, who were detained in Norwich in the busiest and most important season of the year.—In fact, there became a competition of dexterity on all sides in calling objections against voters who were known not to be in Norwich, and whose votes the adverse party could not be prepared to defend. By this mode of proceeding, many Voters, for each party, were struck off the Poll, before they could have had sufficient notice to attend; the Court not allowing the consideration of any vote to be postponed by the defending party beyond the day upon which the objection was called on.

SATURDAY, August 28.

The Court having been adjourned till two o'clock on this day on account of the execution of a criminal, met at that hour, and the Assessor was proceeding to give judgment on some Votes which he had reserved for his consideration, when *Mr. Harvey* rose, and after making an apology for interrupting the Assessor, said, that he was induced to do it to save that learned and honourable Gentleman the trouble of delivering his opinion on what could at that moment make no difference in the final result of the Scrutiny, which was now arrived at that period when its continuance would not only be absurd, but might be deemed frivolous and vexatious—as, however, this remark might by some persons, ignorant of the motives which had uniformly governed the Gentlemen who demanded the Scrutiny, be still applied, for their having persisted so long in what must have for some days appeared to have been a hopeless cause, he must beg the attention of the Court a few moments in vindication both of the motives and conduct of those Gentlemen—It would be in the recollection of all who heard him, that the late Election for the County was most peculiarly circumstanced, at the beginning of the contest, in its progress, and in its duration—The opposition was unexpected, and all parties were, at the commencement of the Election, equally unprepared for those exertions usually attending such contests; to this cause he attributed the irregularity which, for the three first days of the Election, had been complained of; during which time the High Sheriff had not been attended with an Assessor, and when no appeal had been made to the Land-tax Assessments to check the Votes and ascertain the right of the Freeholder to exercise his franchise, when on the casting up of the numbers so small a proportionate majority appeared in favour of Col. Wodehouse's opponent, and that majority carried over a former one for the Colonel, six times as great, it would not be matter of surprise if those who felt a laudable zeal for the interest in which they had engaged, and which they

they had warmly supported, should be somewhat scrupulous of the legality of many of the Votes on the Poll, and should doubt whether an examination of the Poll would not alter it in favour of Col. W. If, adverting to what has been suggested, such scruples were entertained, the only way to satisfy them was the mode adopted, by demanding the Scrutiny, it was what the Legislature had pointed out, and had given a discretionary power to the High Sheriff, to grant or refuse according as he should deem it expedient under existing circumstances.—Mr. Harvey then said, he could not help observing, that he deemed it an ample and full justification of the demand for a Scrutiny, and of the Sheriff's complying with the demand, when he could now state that there had been nearly seven hundred objections made to the voters who had polled, and that nearly five hundred of these voters had been struck off the Poll; and let it be remembered, that all this has been done before a number of objections which remain now on the opposite Lists have been heard, and before a number of others even at this moment have appeared in the Lists delivered to the other parties—had such a statement been made previous to the beginning of the Scrutiny, it might have appeared incredible; had it been believed, who would have been bold enough to have said what would have been the result of a Scrutiny, when even now it only finishes, not because the issue is tried, but because the duration of the trial of that issue is limited by the Legislature to a period inadequate to a complete investigation.—If it is asked why the Scrutiny was not abandoned earlier, it would be sufficient now to say, that where so many Gentlemen had made themselves parties to it, and it was difficult to assemble them for their advice and opinion; it would have been unhandsome and indelicate to have relinquished it without their consent and concurrence.

Mr. Harvey then turned to the High Sheriff and the Assessor, and thanked them for their attention and impartiality during the Scrutiny; he thanked his learned coadjutors for their assistance, and said, that when he recollected the union of ability against which he had had to contend; against the zeal, acuteness and legal point of his learned friend Mr. Alderson; against the persuasive and commanding eloquence of Mr. Mackintosh, which, without being accused of pedantry, he might compare to Nestor's—

Τυ και απο γλωσσης μελιτος γλυκιων ρεεν αυδη* (Homer. Iliad l. 1.

and against the legal ability and discriminating mind of his friend Mr. Hulton, he should not wonder if he had not supported the cause in which he was engaged with the justice it required.

Mr. Harvey then applied a Latin quotation from Cicero to his own exertions, and concluded by recommending that harmony to the contending parties, which, whatever differences there might have been in the arduous contests in which they had been professionally engaged, he was sure would exist between himself and his learned opponents.

Mr. Alderson and *Mr. Mackintosh*, on the part of Mr. Coke, expressed their approbation of the proposal for discontinuing the

* Words, sweet as honey, from his lips distill'd.—Pope.

Scrutiny.—They bestowed many eulogiums on the distinguished liberality and professional exertions of Mr. Harvey.—They acknowledged the attention and patience manifested by the Court during the Scrutiny, and they congratulated the County on the rare but truly constitutional purity of conduct, which the freeholders had shewn in the course of the present Election.—They observed, that the Scrutiny had chiefly brought to view illegalities and informalities of Assessment scarcely blameable in plain unlettered men; but that it had disclosed few or no scenes of fraud, or corrupt contrivance, in any quarter; and they expressed their earnest hopes, that the same simplicity, frankness, and old English honesty might ever continue to be the characteristics of the Freeholders of the County of Norfolk.

Mr. Hulton, on the part of Sir J. Astley, concurred with his learned colleagues in the praise they had bestowed on Mr. Harvey, and said, that he thought it necessary to add, that from past experience, he was justified in concluding, that, if the Scrutiny had lasted longer, the majority of Sir J. Astley would have been greater.

Mr. Adair observed, that, having at the outset of the proceeding, demanded on the part of the Electors in the same interest with himself, a Counter-scrutiny, it only remained for him, now that the original Scrutiny had been abandoned, to require the Return of the Writ which had been suspended by it. How far that proceeding had in its operation on the minds and feelings of the Electors, or in the progress and result of its investigation, justified the conjectures he had from the first ventured to form of it, he forbore now to speak.—He professed to avoid saying any thing that could have it in its remotest tendency, for a moment to interrupt that harmony and good understanding which it had been the wish of his heart to have preserved, and which he sincerely hoped would now be restored. After congratulating the County on the acquisition of so honourable a Representation, he said, he should content himself with repeating, after the lapse of an interval of nearly one month, the requisition he had already made, namely, That the High Sheriff do forthwith return Sir Jacob Henry Astley, Bart. and Thomas William Coke, Esq. as the persons having the majority of numbers on the Poll at the late Election.

Mr. Plumptre, another of the Freeholders demanding the Scrutiny on the Part of Mr. Coke and Sir J. Astley, alluding to the remark of an ancient author on the death of the Emperor Otho, said, that nothing in the course of the Scrutiny so much became his opponents as their act in putting an end to it.

Some conversation then passed between the Court and the Counsel about casting up the numbers.—It seemed to be doubted, whether this step was necessary after the close of a Scrutiny, and when the majority was undisputed.

Mr. Harvey, however, very handsomely waived all objection on the score of irregularity, and it was agreed that the return should immediately be made.

The Sheriff, accordingly, directed the Under-Sheriff to declare Sir Jacob Henry Astley, Bart. and Thomas Wm. Coke, Esq. duly

elected to serve in Parliament, as Knights of the Shire for the County of Norfolk.

Sir Jacob Astley then thanked the Electors in a short speech, expressive of the deep sense which he entertained of the honour which had been conferred on him by the County, and of the steady friendship he had experienced from his worthy Colleague.

Mr. Coke expressed his ardent gratitude to the Freeholders of Norfolk for the confidence with which they had so long honoured him, and declared his intention of continuing to act on those constitutional principles which he had always avowed. He professed his firm reliance on the adherence of his Colleague to the same principles, and hoped that the families of Astley and Coke would always remain united in public opinions, in private friendship, and in their endeavours to deserve the approbation of this county. He complained very feelingly of the vexatious effect of the Scrutiny, especially at this season of the year, which, however, he did not impute to Col. Wodehouse, of whose honourable family and respectable character he spoke with the most marked esteem—but to some unknown persons whose advice on this occasion had unfortunately prevailed. Mr. Coke, as well as Sir J. Astley, expressly assigned the absence of their opponents as the reason that on their side the circumstances attending the late Scrutiny had not been more particularly entered into.

Mr. Coke adverted with some warmth to information which he had received of some circumstances which had occurred, and which appeared to him to indicate a want of impartiality in the Court.

The High Sheriff concisely asserted his own impartiality; and his Assessor, Mr. Stratford, in a very manly way, vindicated his own conduct, acknowledging that his judgment might be sometimes mistaken, but maintaining that his intentions had been uniformly upright.

Mr. Coke was satisfied that he had been mistaken with respect to the point to which he had adverted, and in a personal interview which he afterwards had with the Assessor, in the presence of Mr. Harvey and Mr. Mackintosh, a farther explanation took place, in which the Assessor completely convinced Mr. Coke of the real ground of his conduct in those circumstances where its impartiality had been doubted. Mr. Coke lamented the consequences of his mistake, and the conversation ended to the apparent satisfaction of both Gentlemen.

The Return was signed in Court, and sent to London the succeeding day.

The following Addresses appeared in the Norwich Papers of the following Week:

To the Gentlemen, Clergy, & Freeholders of Norfolk.

GENTLEMEN,—It is in the highest degree gratifying to me that my Friends are now relieved from the long attendance which their generous exertions have imposed on them during the course of a tedious Poll, and a more tedious Scrutiny.—To what motives this

last measure, hitherto unknown in this County, is to be ascribed, they, who have been witnesses of its commencement, its progress, and its termination, are best able to judge; but on the propriety and conduct of such a proceeding, under the peculiar circumstances of the Poll, and at this season of the year, the impartial, calm, and rational Friends of both parties have long since decided.—I have no wish to revive the memory of transactions, which, whatever may have been their influence both on individuals and the Public, did not originate with me; but I cannot forbear to regret that the advice of the more considerate was not heard, and that the Scrutiny, which has occasioned such general inconvenience, was granted.—On its event I have reason to be proud, as it has not only been the means of increasing my majority on the Poll, but has given the strongest contradiction to the assertion, "that the Votes in my favour were "the effect of UNFAIR ARTS, and did not convey the sense of the "REAL Freeholders of the County."

The support which I have received on this occasion has been the most flattering and the most honourable; the support of men, whose independence and integrity, whose public and private virtues, reflect the highest credit on the object of their choice: For their steady friendship, for their generous and disinterested exertions, I shall ever retain the most lively sense of gratitude; without losing sight of my public duty, or forgetting that respect and attention, which is due from a Representative to the general body of his Constituents.

Under the impression of these sentiments, I wish now to close the scene of the Contest in which we have been engaged; to conciliate the minds of my Opponents to the event, and to avert the evils of personal and political "Warfare."

I have the honour to be, Gentlemen,
With respect and gratitude,
Your faithful and obedient Servant,

JACOB HENRY ASTLEY.

Norwich, August 28, 1802.

To the Gentlemen, Clergy, & Freeholders of Norfolk.

GENTLEMEN—Permit me to congratulate you upon the termination of the Scrutiny which Colonel Wodehouse professedly demanded in compliance with the wishes of his friends, and of which he has openly declared to you his "warmest approbation." How far the zeal of his advisers was accompanied by knowledge and discretion, must be left to the consideration of those, who may long have reason to remember, that a Majority in favour of Sir Jacob Astley, which upon the Poll amounted to ninety-five, has now reached one hundred and nine, after the strenuous efforts that were made to reduce it for the space of twenty days.

I am not rash, Gentlemen, in stating, that if the time had allowed every objectionable vote upon every side, to be fairly and fully examined, the superiority of Sir Jacob Astley would, in all probability,

probability, have been greater than it now is; and I confess, that the very unusual proceedings of the Sheriff's Court, have ultimately strengthened my confidence in the merits of a cause, which after a construction of the Statute, possibly right, a construction, possibly wrong, and doubtful assumptions *without any construction* at all, has proved victorious.—I cannot, indeed, dissemble the painful regret which I felt, when, for purposes of defence only, my Counsel found themselves obliged to adopt the mode of warfare which their adversaries had employed, and thus to dispute the Votes of many worthy and respectable Freeholders on the ground of mere informality.—But for severities, which it was not in my power to prevent, the sole responsibility lies, not with the parties who reluctantly engaged in the Scrutiny, but with the persons who originally and spontaneously called upon the Sheriff to grant it.

Sincere is my sorrow for the loss of time, the vexation of spirit, and other unpleasant effects, which the Scrutiny must have occasioned among persons, who are scattered at various distances from Norwich, and whose presence at home must, in this season of harvest, have been peculiarly necessary to the right management of their agricultural concerns. Your good sense, however, will suggest to you, that Sir Jacob Astley and myself are no otherwise answerable for these interruptions, than as Men, who were *compelled* to act upon the conditions which their opponents had prescribed to them, and who, by so doing, have eventually established your rights, together with their own—Your Patriotism, at the same time, will find ample compensation for every temporary inconvenience, when you view the result of the Scrutiny, as a most unequivocal proof of that wisdom and that equity, which characterize the Laws of England, and by which they are justly endeared to every English heart.

Among other favourable consequences of this event, an opportunity is again afforded me for returning my cordial and most respectful thanks to all my Constituents—to those, who with a candour and impartiality that will ever command my esteem, supported me jointly with Colonel Wodehouse—to those, who thought me worthy of the high distinction conferred by a single vote—and to those, who from motives which most deeply interest my best feelings, bestowed their suffrages on Sir Jacob Astley as well as myself.

Many and weighty are the obligations which you laid upon the successful Candidates during the Election, and which, both of us, I trust, will always remember with unfeigned satisfaction, and endeavour at least to repay by unshaken fidelity.—But my particular and most grateful acknowledgements are now due to you, for your dignified generosity in sustaining the expences of the Scrutiny, and for your unwearied activity in facilitating the separation of legal from illegal votes.—The decision made by the Sheriff, will, I hope, speedily put an end to all political animosities; and sure I am, that no exertions on my part, will be wanting to restore that

harmony and mutual good humour, which lately prevailed among you, and which it is the glory of a free people to consider as suspended, but not destroyed, by difference of opinion, in the exercise of their common rights for the common good.

As Colonel Wodehouse in his Addresses to you, complains of Practises, which he describes under the name of "*Arts*," and such arts too "as he would have blushed to see employed in his own behalf," I am under the necessity of confronting vague and invidious statement with direct and ingenuous explanation.—In what then, let me ask, consist the Arts so confidently imputed, and so sharply censured? And what are the facts which tend to convict me of having the smallest share in them? Most certainly, I should have been ashamed to insinuate concerning my Competitor, as some friends of that Competitor have *falsely* reported concerning me, that he thinks himself under little or no obligation to those, who voted for him singly, or conjointly with myself.—As certainly, I have not wished to call down upon him, as others have wickedly endeavoured to bring it upon me, by ascribing to him indecorums which he *never* committed, absurdities which he never uttered, and sentiments of illiberality combined with arrogance, which he is equally incapable with myself of harbouring, even for one moment in his bosom.—I have not attempted to lull the vigilance of my opponents, or to cheer the hopes of my supporters, by ambiguous and indirect preparations for contest, to be avowed, or explained away, to be pursued or abandoned, to be employed in one quarter, or transferred to another, as experiments, and consultations upon the result of experiment, might require.—I am not indebted for any portion of my success to the apostacy of fickle companions and faithless friends, from the cause of my honourable and much respected rival—I have not let loose a fierce and inquisitorial spirit of detraction, upon the real or supposed faults of my neighbours in private life—I have not degraded a large and opulent County into the situation of a petty and venal Borough, by eagerness in issuing peremptory orders for the Bribery Oath to be administered, without any apparent plea from necessity, and without the ordinary delicacies of discrimination.—I have enticed no man by bribes—I have intimidated no man by menaces—and as to the pretensions of voters who have been precipitately, and, I should think, unhandsomely stiled "*impostors*," the Scrutiny shews most incontestibly, that such pretensions, *if* such there were, have not been countenanced by me.—Doubtless, in the hurry of a contest so spirited in itself, and so unforeseen by my well-wishers, possible it is, that among those who supported, as well as those who opposed me, several persons have *innocently* fallen into mistakes about the nature of their property, and the extent of their qualifications.—But my sense of propriety would not have suffered me to charge *imposture* upon any man, or any bodies of men, unless I were in possession of the clearest proofs; and my long acquaintance with the frank

and

and manly character of the Freeholders of Norfolk, abundantly convinces me, that no one class of them deserves to be mentioned in opprobrious terms.—For my part, I am accustomed to honour their zeal, whether the direction it takes, be favourable or unfavourable to myself; and I am determined to vindicate their rights from whatsoever quarter they may be attacked.

Through every stage of the present contest, it has been my earnest desire to abstain from unprovoked and unbecoming reproaches towards every man, who, from the honest conviction of his own mind, supported my Competitor.—But when my opponents stand forth as my accusers, they would do well to remember, that so far as my suffrages in Parliament, or my influence out of it, could have extended, no Husbandman or Manufacturer would have been bereaved of the fruits of his honest industry, or dragged from the land of his Fathers, to perish in foreign climes; no lovely charities of social life, by which friend is endeared to friend, or neighbour to neighbour, would have been interrupted; no burthensome taxes would have been imposed; no innovations would have been craftily introduced into Government; no rigour would have been wantonly exercised without the sanction of Law; no altar would have been profaned; no throne would have been endangered; no cottage would have been visited by the sorest scourges of Heaven, pestilence, famine, and the sword.

Prepared alike against the snares of solicitation, and the din of threats, I disdained to desert in reality, or even appearance, the genuine doctrines of Whiggism—I found in common sense and common honesty, sufficient preservatives for myself, against the contagion of popular panic, and the seduction of high, but, in some instances, I fear, corrupt example—I looked for national honour in national security,—for national security in peace—and for peace, in the triumphs of wisdom over prejudice, of justice over passion, and of magnanimity over real or pretended fears.

For the rule of my conduct, I have again and again referred you, not to romantic and novel theories, but to those *practical* and sound principles, which afforded to our ancestors the surest protection for their happiness as men, and their principles as Englishmen—principles, which acquired, surely, additional authority and additional lustre under the auspices of William III. and which, in succeeding reigns, seem to have been deeply incorporated into the opinions, the habits, and the laws of an enlightened people, who were conscious of having been delivered, *without bloodshed*, from the perils of civil and religious bondage.—By those principles, was I enabled to discern the transcendental and characteristic excellence of a Constitution, which, like our own, had placed not only the *strongest*, but the very *clearest* boundaries, between the use and abuse of power, on the one hand, and between liberty and licentiousness, on the other.—To those principles I adhered, not only during the

smooth and prosperous flow of public affairs, but amidst those occasional agitations of the public mind, to which every form of Government, contrived by human wisdom, but administered by human infirmity, must inevitably be exposed.—From those principles I swerved not, under the multiplied difficulties of two eventful Wars.—Guided by those principles, I formerly strove to avert that necessity, which severed our American Colonies from the Mother Country, after a profuse expenditure of treasure and of blood. At a later period, I was taught by those principles, to lament and to oppose that system of Administration, which, according to the sober and avowed judgment of almost every Englishman, in almost every party, finally left us no other alternative, than a continuance of hostilities, by which England might have been subjected to fresh and grinding taxation, in fresh and unprofitable efforts, or the cessation of them, upon terms, which have given to France increased security from all she has recovered, and increased aggrandizement from all she had acquired.—It is now become my indispensable and most pleasing duty, to employ those principles in diffusing and perpetuating the blessings, which Providence has graciously bestowed upon us by the return of Peace; and if any deplorable change in the politics of Europe should again bring my Country into a state of warfare, I shall again have recourse to the same principles, as the most efficacious means of alleviating its calamities, and shortening its duration.

Surely, he that recommends *such* principles by precept, or enforces them by example, ought not to be hunted down by rude and savage clamour, as the enemy of civilization—as the disturber of good order—as a *Jacobin*, who, in the detestable spirit of the crew, and according to the *only* justifiable use of the *word*, would plunder his superiors, tyrannize over his Countrymen, murder his Governors, and blaspheme his God. During the calm of Peace there cannot be even the colour of a reason for the repetition of that hideous jargon, which beguiled and exasperated the minds of men in the gloomy and tempestuous season of War.

Far be it from me to condemn in other men that exercise of free and impartial judgment which I have ever asserted for myself. But if any persons there be, who, deaf to the warnings of recent experience, are yet determined to persist in undisguised, undistinguishing, unrelenting hostility to the principles for which I contend, it cannot be improper to remind them, that they may themselves unwarily realize the mischiefs which they loudly deprecate, and eventually become the destroyers, not the preservers, of national strength, consolidated by national union, and invigorated by Constitutional liberty.

At such a juncture as the present, it were vain to expect that every Freeholder should assent to every opinion, or approve of every measure, for which I hold myself responsible to the County, and to the Public—But I am resolved to deceive no man, be he friendly

friendly or adverse to me, though I am aware, that by executing that resolution, I may chance to offend in some quarters, where it is impossible for me to please, without the baseness of duplicity or the meanness of cowardice.—Be then assured, Gentlemen, that no man living feels more sincere reverence than I do, for Loyalty, as a precious and sacred homage due to power, wheresoever power, under the guidance of law, is employed, in fostering merit, in protecting innocence, and in dispensing equal justice to every subject of every class—But Heaven forbid, that under the disguise, or I should rather say, by the *prostitution* of this, or any other venerable name, I should surrender my independence, or violate my conscience.—That for selfish purposes of venality or ambition, I should be the betrayer, when I had pledged myself to be a guardian of the public weal—That I should endeavour to decoy others, or suffer myself to be decoyed into sottish credulity, or abject thraldom—On the contrary, it is my wish to be esteemed a free and uncorrupt Member of Parliament, in a free and civilized society, *every* member of which *must* have a common interest and a common duty, in quelling the outrages of Faction, and watching against the encroachments of oppression.

Reflecting on the magnitude of the trust which you have again reposed in me, I thought myself bounden, thus unreservedly and thus seriously, to lay before you, the fixed sentiments of my soul. —I love my country—I am thankful to you my Constituents—and to the latest hour of my existence, it will be my constant aim to promote your welfare, and my highest ambition to be honoured by your support.

I am, Gentlemen, with the greatest respect,
And most unalterable attachment,
Your much obliged,
And obedient humble Servant,
THOMAS WILLIAM COKE.

Norwich, August 28, 1802.

To the Gentlemen, Clergy, and Freeholders of the County of Norfolk.

GENTLEMEN,—Difficult as must be every attempt of mine, to give adequate expression to that gratitude, with which your continued kindness has inspired me, the termination of the Scrutiny reminds me of my duty to offer you again my warmest thanks for your most zealous and voluntary support.

I am well aware that the extraordinary exertions, which I have witnessed, are not to be ascribed to any personal claims of my own, on your favour or interest, but to the just influence of that common

mon Cause, by which we have been animated to what may still be termed a GLORIOUS struggle. To be selected, however, as the Representative of such a Cause, is an honour, of which I shall ever retain the deepest impression; an honour to which even success could add no lustre, if it were unaccompanied with that plain integrity of conduct, and that manly abhorrence of fraud and stratagem, which I trust will ever govern the actions of those whom I am proud to call my friends. With them, I am well assured, the attainment of their object will ever be a secondary consideration to the justice of the means which they will employ in its pursuit.

To those Electors in my interest, who have thought proper to demand and carry on the Scrutiny on my behalf, I feel myself under peculiar obligations; as well as to those, whose zeal and patience have enabled them to bear up against the vexatious delays by which that measure has been impeded. It must have been obvious to every one, how those delays were occasioned, and from what quarter they proceeded.

The unjustifiable system pursued by our Adversaries, of refusing to scrutinize the Votes of those Freeholders, who were patiently waiting day after day, for an opportunity of defending their rights, and of attacking only those of the absent, has been beyond measure harrassing and distressing to the County. This circumstance alone, (without adverting to the delay of business, which they have so studiously occasioned) must convince every impartial observer, that they were conscious of their own weakness, and dreaded the result of a fair Scrutiny.

My friends have had to encounter both the insufficiency of time allowed by Law, and the successful struggles of their Adversaries to prevent them from reaping in it their lawful advantages. It must therefore be a matter less of surprize, than of regret, that their endeavours should have failed in commanding success.

How far it may be adviseable to carry these proceedings before a Tribunal, where similar inconveniences cannot arise, it is not left for me to determine. I shall continue to repose entire confidence in the judgment and discretion of my friends, to act as to them it shall seem most prudent. But I must still repeat, that at whatever time, and in whatever mode the County may think proper to call forth my services, I shall be ready to tender them with the utmost zeal and gratitude, so long as the objects for employing them may be, to protect the just rights of my Sovereign; to maintain the establishments of the Church; and to preserve, from the innovations of Faction, the ancient purity of our Laws and Constitution.

I have the honour to be, Gentlemen,
With every sentiment of regard and respect,
Your most faithful humble Servant,

JOHN WODEHOUSE.

Witton Park, August 30, 1802.

WE

WE have received permission to publish the following Circular Letters, from the Right Hon. Wm. Windham and the Hon. Col. Wodehouse, to the Subscribers to the respective Funds, with which we shall close the NARRATIVE *of this extraordinary Contest.*

(CIRCULAR).

PALL MALL, August, 1802.

SIR—Though I had generally expressed, before I left Norfolk, my obligations to those, who from kindness to me, as well as zeal for a public object, had conceived the intention of bringing me forward, free of expence, as a Candidate for the County, yet I cannot forbear, (now that I am furnished with a list containing the necessary information) to express my separate thanks to those, who had actually set down their names, as parties to that design.

Let me request of you, Sir, as one of the number, to accept my warmest acknowledgements, and to feel assured, that nothing can effaee from my mind the sense of what I have owed to the County on this occasion.

Though I lament most sincerely the event of the Contest, such as it at present appears, yet I cannot but derive one consolation from it individually, that it seems to justify the decision which I felt myself compelled to make, and to absolve me from the charge of having either abandoned inconsiderately my own interests, or, what I should think of far more consequence, of having been wanting to the wishes of my Friends. It is by no means clear, in the shape which things finally took, that I should have had the support of Mr. Wodehouse's Friends: and at all events the expence, as it now appears, would have been such, as I could neither have been justified in taking upon myself, nor have been satisfied to leave to these, to whom I owed so many other obligations.

Under this impression, as well as with a view to the success which is still, I hope, to be looked for, I cannot feel myself at liberty to regret a decision, which whatever else it may have deprived me of, has not deprived me of the satisfaction of knowing, what was intended for me, by yourself and others, and what in general were the sentiments, which the county had the goodness to entertain in my behalf.

Let me again request you to believe, that the obligations thus conferred, have left a lasting impression on my mind, and that

I am, Sir, Your most faithful,
And obliged humble Servant,
W. WINDHAM.

(CIRCULAR).

SIR—Often as I have had occasion to express my sense of gratitude for the distinguished support which I received during the late arduous contest, I feel it my duty once more to return my particular thanks to those Friends, who have so liberally contributed towards defraying the expences of the Election and Scrutiny.

The weight of such an obligation would be extremely painful to me, were I not confident that you, and my other generous supporters, were actuated solely by public principle, nor could I for a moment presume, that such exertions had been made on account of an humble individual like myself; on the contrary, I have always been conscious that they were intended solely to declare the opinions of the Loyal and Independent part of the County, proud as I am of having been chosen the instrument in so honourable a Cause.

I look forward with the utmost anxiety to the arrival of that period, when the genuine spirit of Loyalty, manifested by my numerous Friends, must be triumphant; and when, in spite of the enormous wealth and influence of our Adversaries, my respectable and much honoured supporters will at length successfully assert their right to a share in the Representation of the County.

I have the honour to be, Sir,
With unalterable regard and attachment,
Your obliged and devoted humble Servant,
JOHN WODEHOUSE.

Witton Park, Oct. 1802.

NOTES

NOTES

OF THE

PRINCIPAL CASES

WHICH

Occurred during the Scrutiny.

Assessment.

DEACON Rev. John, Clerk, Norwich—WODEHOUSE.
Objection—not assessed.—(See Poll Book, p. 178*).*

MR. Deacon voted for the Rectory of Carlton St. Mary, in the town of East Carlton.—In the same place is another Rectory, viz. Carlton St. Peter, of which the Rev. Mr. Greenwood is Rector. The parishes are so intermixed, that the several Rectors knew not precisely their boundaries.—They were jointly assessed by the rate for East Carlton, thus:

" Rectors, Glebes and Tithes, £.7 12*s.*

and each of the Rectors had for many years received a proportion of the profits from Sir Thomas Beevor.

It was submitted by *Hulton and Woodhouse*, that this Assessment was insufficient under 30 Geo. 3, as not containing the name of either Landlord or Tenant—it was merely a description of the property and not of the person.

Cooper contended, that the word " Rectors" should be read as a nominative plural, not as a genitive singular—that it actually stood in the column of Proprietors and should therefore be read as if it were written " Rectors for Tithes and Glebes;" in which case there was a *designatio personarum* in the name of their offices, which from the public nature of those offices, described them as effectually as an entry of their names would have done—And it

had been so held in the case of the Schoolmaster of Lincham—Cricklade Case—2 Luders 539. 1 Heywood 137. Orme. 183.

But the *Assessor* held, that "Rectors" was connected as a genitive with "Glebes and Tithes" and as neither Proprietor nor Tenant was named or described, the Act of 30 G. 3, was not complied with. *BAD.*

RITSON Rev. Barth. Clk. Lowestoft.—WODEHOUSE.

Objection—not assessed.—(See P. B. p. 187.*)*

Mr. Ritson voted for the Perpetual Curacy of Aldeby.—He receives, as Curate, a stipend issuing out of the Lands belonging to the Dean and Chapter of Norwich, who are assessed for them.

Hulton contended that this was an Annuity, which, not being registered, ought to have been specifically assessed.

Cooper relied on Nethersole's Case, Bedf. 2 Lud. 507. 1 Heyw. 138. Orme 181, where the Vote of a Vicar receiving a stipend from the Impropriator, was held to be good though he was not assessed, because it was impossible for him to get his name inserted in the rate by any means allowed him by the law.

The ASSESSOR held this case to be directly in point. *GOOD.*

BARROW Samuel, Runham—ASTLEY & COKE.—

Objection—not assessed.—(See B. P. p. 52.)

The Widow Gostling occupied a *small part* of the house for which Mr. Barrow voted, he occupied the rest.—She was rated both as Owner and Tenant—She was formerly the Proprietor, but in 1800 she conveyed the whole house to the voter, who was related to her.—There was no reservation in the conveyance or otherwise in writing of any right for her to remain in the house, but the Voter said that it was understood at the time that she was to do so—she did not pay him any rent, and appeared to be an inmate only.

The ASSESSOR—Parole Evidence cannot support Mrs. Gostling's right to remain in the house against her own conveyance—she is not such an occupier as is required by the 30th Geo. 3.—*BAD.*

HUBBARD William—Wymondham—WODEHOUSE.

Objection—not assessed—(See P. B. p. 77.*)*

The Voter's name stands on the rate as occupier of the Tenement in which he lives, but at the Poll he gave in the name of Francis

Francis Foulsham as his Tenant, who occupies an adjoining Tenement also belonging to the Voter.

Alderson and Hulton contended, that this Assessment was insufficient, and the Assessor postponed his decision till the next day, when, on an examination of the Voter, it appeared, that the two tenements were under one roof, and were, in fact, but one house, and that the Assessment was considered to cover the whole.

The Assessor held, that as the Voter occupied a part of the house, and was actually rated for it, the Assessment was good, although the name of the other occupier only appeared on the Poll.

GOOD.

CARVER Philip, Wymondham—Wodehouse—*Objection—not assessed—(See P. B. p. 77).*

The Estate has been for a long time untenanted—It was thus assessed—"J. S. Cann" Proprietor "late Syder," Occupier—Mr. Cann paid the land-tax for the Voter.

Harvey submitted, that the last Tenant's name being on the rate was sufficient, as no other could have been inserted in it.

Alderson made two objections.—1st. That the Voter should have procured his own name to be inserted in the rate as owner, there being no tenant.—2d. That as the house was unoccupied, he was not entitled to vote, not being in receipt of the rents and profits, as he had sworn at the Poll.

The Assessor overruled the latter objection, as it was not necessary for the Voter actually to receive the Rents provided he was *entitled* to receive them—But as the Voter had neglected to get his own name on the rate he held the Vote to be *BAD.*

CARTER James, Southrepps—Wodehouse—*Objection—not assessd—(See P. B. p. 36).*

In this case, the Estate for which the Voter polled was assessed in the name of *Edward* Carter, as both Landlord and Tenant—Edward is the Voter's Brother, and occupies the whole of his Land as well as some of his own.

Woodhouse and Hulton contended, that this Assessment was insufficient. The Act of 30th Geo. 3. was passed solely to remove doubts. Here one name only appeared—if both had been on the rate with *one joint sum* they admitted that it would have been sufficient, as in the Cricklade Case, but here the property does not appear to be distinctly assessed—If both names are not

on the rate, the difficulties are increased, which the Act was intended to remove.

Cooper. Whatever might have been the law before this Act, it is sufficient that this Act has passed—but the points were not clear against the present case, even before the passing of the Act. —According to the argument from the other side, the Assessment in Pinnegar's Case should have been separate and not jointly, as "The Mr. Pinnegars," 2 Lud. 537.—1 Heyw. 140.—Orme 179. —In Whittal's Case (2 Lud. 524.—1 Heyw. 141.—Orme 178) the Assessment of "Wm. Boyes and Tho. Whittal" was held not to be good, but that was before the passing of the Act of the 30th Geo. 3.—We now put the Landlord out of the case, and shew a tenant actually assessed, which is all that the statute requires.

The Assessor. James Carter is the only Proprietor to whom Edward can, strictly speaking, be called Tenant—the rest of the Land which he occupies is his own—The 30th Geo. 3. is complied with, as Edward Carter, an actual Tenant, is on the rate; and if his vote should come in question, that would be good also.

GOOD.

BRIGHTMAN John, Wells—Astley and Coke—
Objection—not assessed—(See P. B. p. 103*).*

In this case the name of the Voter had been marked out of the Rate by a pen being drawn across it.—The Assessor of the parish attended to prove that this had been done by mistake; and the name appeared in the rate for the present year. *GOOD.*

WIGGETT John, East Bradenham.—Wodehouse.
Objection—not assessed—(See P. B. p. 105.

He voted for an Estate at Great Ellingham, which was assessed in the name of his father, *Thomas* Wiggett; but it appearing that the father had no Estate in the parish, the evidence was allowed to correct the rate, and the vote was held. *GOOD.*

ALLEN Robert, of Thursford.—Wodehouse.
Objection—not assessed.—(See P. B. p. 101.*)*

He purchased the Tenement at Hindringham, for which he voted at Lady-day 1801. Elizabeth Snell was then the tenant, and she is on the rate. But it appeared that Osborn Youngs lived with Mrs. Snell, and that it was he who paid the Voter the rent from Lady-day to Michaelmas 1801. They were not married, and the Voter appeared

peared to have considered Youngs as his tenant, but did not speak positively about it. He had not his Conveyance with him, but Mr. Jones, the Conveyancer who had prepared it, was in Court, and said that he thought Youngs was named in it as the tenant

Alderson and Mackintosh submitted, that as Youngs paid the rent, he alone must have been considered as the tenant, and that Snell was merely a lodger or inmate, not within the meaning of the 30th Geo. 3, as a tenant actually occupying the premises. The landlord would have distrained Youngs's goods, had the rent been in arrear.

Harvey.—There is surely a strong presumption, that of two persons living in the tenement, the one actually rated was the actual tenant. It is of no importance whose goods were distrained if the rent had been in arrear;—the landlord might have taken any that should have been found there.

The Assessor.—It is sufficient that there were two persons in the house who went by different names. Either of them might be the tenant, and there were two reasons for fixing upon Mrs. Snell; because that construction would be in favour of a franchise, and because the Assessor of the Parish (who must be supposed to have some judgment of the circumstances) had considered her as the tenant in making the rate. *GOOD.*

CLARK John, of Upton.—Wodehouse.

Objection—not assessed.—(See P. B. p. 168).

The Voter was entitled to one-third part of an Estate for which Roll was rated as owner, and Waters occupier. Roll in fact was Clark's tenant, and not Waters, who was the under-tenant to Roll, And Roll was also the proprietor of the remaining two-thirds of the Estate, the whole of which was actually occupied by Roll.

Mr. Alderson maintained that this assessment was insufficient; the Voter not being rated either by himself as owner, or by Roll, *his tenant*, as occupier.

Harvey.—Every part of the Act of the 30th Geo. 3, is complied with. Both Waters, the actual occupier, and Roll, the immediate tenant to the Voter, are on the Rate. The Asssessment is good, taken either way.

The Assessor seemed to incline to Mr. Harvey's opinion; but on Mr. Alderson's referring him to Wittenstall's case,* (2 Lud. 508, 1 Heyw. 139, Orme 179) he agreed to postpone his decision till the next morning; when, on the authority of that case, he held the vote *BAD.*

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* It may be proper to observe, however, that this Case was prior to the Act of the 30th Geo. 3, which removed the doubts which had prevailed respecting the sufficiency of an Assessment of the tenant only.

WINN Israel, Binham.—ASTLEY & COKE.

Objection—not assessed.—(See P. B. p. 100).

The Estate was assessed in the name of *Bunn*, as tenant. But Smith was the real occupier, and Bunn merely received the rent for the voter. It was held that he was not a tenant within the meaning of the 30th Geo. 3. *BAD.*

AUGUST Simon, of Sloley.—WODEHOUSE.

Objection—not assessed.—(See P. B. p. 163).

By mistake the name of Simon *Beck* appeared on the Rate, instead of Simon *August*. But the property being proved to be August's, it was allowed as evidence against the Rate. *GOOD.*

AKERLY John, Hindolveston.—ASTLEY & COKE.

Objection—not assessed.—(See P. B. p. 47).

He was assessed in the name of John *Eke*, which was a *nick-name*, under which the Voter was well known in the parish.—There was, however, a *John Eke* in the parish, but it was shewn that he had no property. The Assessor of the parish stated, that under the name of *Eke*, he meant to describe the Voter. *GOOD.*

Annuity.

LINCOLN Edmund, Ovington—WODEHOUSE—*Objection—that he voted for an Annuity not registered nor assessed—(See P. B. p.* 171.*)*

MR. Lincoln stated, that he voted for an Annuity of 40l. to which he was entitled in right of his wife during her life—she was the Widow of Mr. Ward, of Ovington, who, by his will, devised an Estate in that parish subject to this Annuity.—The Estate was assessed to the Land-tax in the name of Ward's Executors, as Owners, and of Mr. Lincoln himself as one of the Occupiers.

1st. As to its not being registered.

Cooper. This Case depends on the construction of the Act of 3 Geo. 3. cap. 24.—The only notice in that Act of Annuities of this description is in the 2d Section, which requires a Certificate to be entered with the Clerk of the Peace, where the Annuity has been derived, within 12 months before the Election. The particular provisions in this section, respecting such Annuities, afford a strong presumption that they were not intended to be included in the general provisions contained in the first Clause; a conclusion which is warranted by the spirit and intention of the Act. For in the preamble it appears, that the object of the Statute was to afford some means of judging of the number of Electors in a County, and to prevent their being multiplied secretly by grants, a mode of conveyance which is subject to the objections stated against it in the preamble. But Wills are not liable to those objections; within a reasonable time after a devise of an Annuity can take effect, the will itself must be open to the inspection of all the world, and until that time, the Act has provided against the evils which might arise from its secrecy by the 2d section. Grants are *intervivos*, and not open to public inspection. It was so argued in Palmer's Bedf. 2d Lud. 504, 1 Heyw. 153, Orme 193.

Hulton and Woodhouse.—The preamble of the Act does not warrant the conclusion which has been drawn from it, as the objection of privacy applies as much to Annuities under Wills as to those under Deeds. If it does not, why does the 2d section of this Act require a certificate to be entered, in order to entitle the Annuitant to vote within twelve months? There is as much reason for the registration *after* the twelve months, as *before* the expiration of them.—Palmer's Case (2d Lud. 504, Bedf.) is in point.—It was argued

argued there in defence of the vote as by Mr. Cooper, but the Committee decided against the vote as they did also in Pincard's case on the same grounds, 2d Lud. 504, 1 Heyw. 154, Orme 192—And there is the authority of the Gloucestershire Committee, as well that of the Bedfordshire, to support the necessity of its being registered. Bathurst's case Resolves of Glou. Com. 38—1 Heyw. 154, Orme 194. If the present case be not within the letter of the Law, it is certainly within the spirit of it.—If it be exeluded from the provisions of this statute, there would be a door opened to the grossest impositions; for the Sheriff at the Poll has no means of judging of the validity of votes of this description, but by referring to the register. This Act was meant to be analogous to the Acts requiring Assessments to the Land-tax—by those Acts Voters of a certain description are required to prove their assessment: by this Act, voters of another description are called upon to shew their registration.

Cooper.—Pincard's case is very loosely reported; there is probably an omission in the Report, of the Annuity having been derived within twelve months—And it seems not unlikely that there is the same omission in Bathurst's case.—Palmer's was determined on another ground, the inaccuracy of the description given in at the Poll, therefore nothing can be inferred from the decision of the Committee upon it. It is manifest that Mr. Serjeant Heyward's Corollary, (1 Heyw. 154) that Annuities by office are not within the Act, should be extended to Annuities by devise, which are of a similar nature, and are expressly classed with them in the second section of the same statute.—Harrington's case (Glou. Resolves 127, 1 Heyw. 153, Orme 194) is directly in point.—It was there resolved by the Gloucestershire Committee, that an Annuity by Will did not require to be registered, which makes it more than probable that the decision of the same Committee in Bathurst's case, turned upon some other point.

Hulton and Woodhouse.—Harrington's case is not at variance with those determined by the Bedfordshire Committee.—They related to Annuities first created by a devisor, but Harrington voted for a *Fee Farm Rent* which existed before the Will.—A fee farm rent is notorious, because it is always assessed—it therefore needs not be registered; not requiring to be registered in the hands of the devisor, it is not necessary in those of the devisee.

The Assessor.—There seems not to be any difficulty in this case. It has been stated in argument, that it is requisite for the purpose of notoriety, to register Annuities by devise as well as those by grant. But it is not necessary to argue on the mischiefs which might arise one way or the other; for if the Act have made a difference between these two kinds of Annuity, that should be conclusive; if forms be prescribed for one species and not for the other, it is idle to say that they are necessary for both. Harrington's case does not apply to the present question; for the point is extremely different as to a Fee Farm

farm-rent, which needed not at first to be registered, and of which a devise could make no alteration, as it must still remain the same thing.

But on looking to the Act, the words are exceedingly clear, that when an Annuity comes by devise *within* 12 months, it must be registered, and they are equally clear that no registration is required *after* that period. It was certainly a strong thing for a Committee of the House of Commons to make their decision in the teeth of an Act which that House had framed, and it would be still stronger for a Sheriff to determine against their decisions. But the series of cases is by no means clear.—In Bathurst's it appears that the determination was made upon the ground that the register contained an inaccurate description of the Annuity. Pincard's Case is so shortly reported that it is difficult to form any opinion about it, and indeed one must suppose that the Annuity there was derived *within* twelve months. The case seems to be clear, that the registration is not necessary, but if any difficulty should remain with the Counsel for the party making the objection there can be no impropriety in postponing it for reconsideration.

This being requested by Mr. Hulton, the decision was deferred from the 3d till the 6th day of the Scrutiny.

2dly. As to the Assessment.

Hulton. There is another objection, that is, that this Annuity has not been assessed.—A Fee-farm Rent is required to have a specific part of the Land-tax laid to it;—so, therefore, should an annuity not registered.

Assessor. Distress cannot be made on an Annuity—an annual sum has nothing more to do with the land than a gross sum.

Hulton referred to Heywood, vol. 1, p. 130, and to Orme 192. —In Pincard's Case, 2d. Lud. 505, if the Counsel for the objecting party abandoned their first ground of objection, as had been suggested, the Committee must have determined upon the second; that of non-assessment.

Cooper cited Gales's Case, (2 Lud. 499. 1st. Heywood 137), where it was determined, that an Annuity, by office, was not required to be assessed—and contended, that the case was the same with Annuities by devise, which are expressly classed with those by office in the Act.—Gale could not get his name on the rate; no more could the present Voter for his Annuity.

The Assessor said, that he had already supposed Pincard's Case to have been that of an Annuity derived *within* 12 months, a circumstance which he conceived to have been omitted in the Report. —He thought that the present Annuity did not require Assessment, but would postpone his decision.

On the sixth day the Assessor delivered his opinion, of which the following is the substance.

The whole of the Law relative to this case is to be collected from the several Acts of Parliament relating to qualifications.—It has not been stated in the argument that it is usual for Annuities

and Rent Charges to be assessed, and no case has been determined upon that point; but as questions of this nature must frequently have occurred at Elections, and no further notice has been taken of them, there is therefore a presumption against this objection. In the time of William and Mary it became customary to carve many votes out of one Freehold.—This practice occasioned the clause in the Act of 7 and 8 W. and M. c. 25, to prevent the splitting of interests in the same tenement.—After that Act other modes were resorted to for compassing the same end, and it became usual to convey estates with defeasances and without a consideration. These devises were provided against by the Acts of 10 Anne, cap. 23, and 12 Anne, c. 5.—In order to render the avenues to fraud more difficult of access, the Act of 18 Geo. 2. c. 18, was passed requiring an Assessment to the Land-tax for 12 months before the Election. It was then that Annuities were invented as the means of multiplying votes, without infringing upon any of the former provisions, for, being merely charges on the Freehold, they did not come within either the Act against the Splitting of Interests, or that requiring Assessment to the Land-tax. To prevent votes of this description being secretly multiplied, the Legislature thought proper to frame the Act of 3 Geo. 3. c. 24, requiring them to be registered 12 months before the Election: this register of Annuities issuing out of Freeholds, was plainly intended to bear an analogy to the Assessment of the Freeholds themselves for the same period, and shewed that it was not intended that they should be also assessed to the Land-tax.—If they had been so required, the Land would be doubly assessed, as the Land and as its produce; the rents and profits being undoubtedly as much land as the soil itself. But this Act does not require all Annuities to be registered. This is one of the excepted cases. The Act certainly has not obliged these Annuities to be registered, and the Sheriff cannot supply the omission. But it has been said, that the Act of the 20 Geo. 3. c. 17, directs an Assessment of such Annuities as require registration. It does not extend to Annuities or Fee-farm Rents which *are* registered, and therefore it is construed to extend to those which are *not* registered—but this does not appear, nor does this Act profess to supply any defects of that of the 3 Geo. 3. In fact, no case has ever been determined on the second objection. Mr. Hulton has cited Mr. Serjeant Heywood's opinion, that every species of property must be assessed, unless it be derived within 12 months by devise, &c. or unless the qualification be an Annuity or fee-farm rent duly registered. But this is a mere opinion, though of a very able man, and who seems generally to feel the necessity of supporting what he says by some authority, yet has, in that instance, omitted it. It is nothing more than an opinion, which the learned author states as having been *seemingly* that of the Bedfordshire Committee. The Assessor being therefore of opinion that the Voter's Annuity did not require to be either registered or assessed—the Vote was held *GOOD.*

WARBY John, Carbrooke—WODEHOUSE—*Objection Not assessed.* *(See P. B. p.* 170*).*

He voted for an Annuity, and stated on oath, that he had declared so to the Poll-clerk, who had entered him as voting for land. The Poll was therefore allowed to be corrected. The Annuity issued out of an estate, which was assessed, upon which it had been charged by will, but the voter derived his claim to the Annuity under an assignment.

Hulton contended, that whether the Annuity required originally to be registered or otherwise*, yet the Assignment ought to be registered under the 4th sect. of the Act. 3 Geo. 3. c. 24.

Cooper. The directions of that Clause, respecting assignments of Annuities, evidently refer to those Annuities exclusively which have been granted by deed. The words are "unless a memorial of such assignment, and also a memorial of the *grant of such Annuity or Rent Charge, of which such assignment shall be made*, shall have been attested and registered," &c.

The ASSESSOR postponed his decision until he should deliver that on the preceding case, when he stated as his opinion, that where the Annuity was not originally required to be registered, no subsequent assignment could alter the nature of it so as to render the registration necessary. *GOOD.*

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* The preceding Case was not then determined, the decision having been postponed.

Copyhold.

CULLEY Robert, Witton—WODEHOUSE.—*Objection—not assessed, and copyhold.—(See P. B. p. 4).*

THE objection of non-assessment being disposed of, Mr. Culley stated that he voted for an Estate consisting of 25 Acres of Land, of which 19 Acres were Copyhold, and the rest Freehold.

Hulton asked whether he had had any other Conveyance of this property than by surrender and admission.

Cooper objected to this question, as the Voter's answer might tend to prejudice his own title.

ASSESSOR.—The Voter has stated that he has Freehold Land, and he has before sworn it at the Poll; the presumption is therefore in his favour, and the party making the objection must prove that there is no Freehold.

Hulton said, he could prove it by the evidence of a professional Gentleman, but he did not wish to do it.

The ASSESSOR then expressed his wish that the Voter would state the fact, as he thought he ought not to leave the Court with the imputation of having given a false Vote; upon this, the Voter admitted that he had had no other Conveyance.

Cooper.—They have not yet proved enough—If there be any Freehold, (and the Voter has sworn that there is) then the Vendor remains a Trustee for him, and is bound to complete his title to it by executing a Freehold Conveyance.

The Voter then stated, that he had paid for the six acres of Freehold Land, and that a professional Gentleman, present in Court, had prepared the Conveyances. This Gentleman informed the Court, that on his perusing the Title Deeds, there did not appear to be any Freehold Land, that the whole appeared to have always passed as Copyhold, and that he had accordingly conveyed it as Copyhold only.

Cooper.—The Deeds can be no evidence to support the objection, the existence of the Freehold Land being already proved.

ASSESSOR.—The Voter has made his Contract, and paid the Purchase Money.—He is in possession, and only waits for the performance of his Contract by the Conveyance; there can be no doubt of the Law.—If the Vendor lets the purchaser into possession, and neglects to perform his Contract, he is a Trustee for the purchaser, the money being paid.—What is the fact respecting the tenure?—Six Acres are stated as Freehold—If the whole be Copyhold, then the

the objecting Party should shew it to be so by producing the admission; but if an admission be produced for 19 acres only, then the presumption is that the remainder is Freehold, or at least that is not Copyhold of that Manor.—It must therefore be proved, either that the Voter is mistaken in stating the quantity of his Land, or that the remaining six acres are of some nature less than Freehold. If this be not proved, then here is *Cestui que trust*, in receipt of the profits of Freehold Lands above the value of 40s. and therefore entitled to Vote. *GOOD.*

Correction of Poll.

EMPSON James, Palling—WODEHOUSE,—*Objection not assessed.—(See P. B. p.* 119*).*

THE Voter polled for an Estate, at Smallburgh, for which Jackson was on the rate as owner, and Plummer as Tenant.—On the Poll Mrs. Wiseman was entered as Tenant—But from the Voter's statement it appeared that Plummer was the actual Tenant, and that Mrs. Wiseman was his Landlady of the Estate which he occupies. He said that he voted for his Estate, at Smallburgh, but that he understood the Poll Clerk to ask him *whose Tenant he was*, and not *who is Tenant;* he therefore gave in the name of Mrs. Wiseman, his Landlady.

The ASSESSOR held this to be a mistake, not happening through the wilful neglect of the Voter, and therefore ordered the Poll to be corrected. *GOOD.*

FULCHER Thomas, Shotesham.—(See P. B. p. 122.*)*

His name was entered on the Poll by mistake, as having voted for Coke and Wodehouse.—It should have been entered for Coke and Astley, which was proved by Mr. Fulcher and by Mr. Rigby, of Norwich, who accompanied him to the Booth. The evidence was allowed to correct the Poll.

COLLINS Edmund, Yarmouth—COKE & WODEHOUSE *—Objection—not assessed.—(See P. B. p.* 56*).*

The objection against this Voter had been made on the part of Sir Jacob Astley, but when he appeared, he stated on oath, that he voted for Coke and Astley.

Harvey

Harvey contended, that the Poll could not be corrected, as no notice had been given for that purpose; and that if the Poll were allowed to be corrected, he ought to be permitted, on the part of Col. Wodehouse, to prove the non assessment, which formed the objection made on the part of Sir Jacob Astley.

The ASSESSOR conceived that notice was necessary for both these purposes; but the non-assessment being admitted, it was agreed by both parties that the notice should be waived, and the Vote struck out of the Poll.

NORTON Thos. Yarmouth—WODEHOUSE—*Objection —not assessed and no freehold.—(See* P. *B. p.* 64*).*

The Voter had Polled for an Estate, at *Yarmouth*, but the Poll Clerk had entered it at *Ormsby*, where the Voter had no property. Upon his evidence, on oath, the Poll was allowed to be corrected.

GOOD.

WOODCOCKE Richard, Norwich—WODEHOUSE—*Objection—not assessed.—(See P. B. p.* 183*).*

On the Poll, it appeared that the Estate for which Mr. Woodcocke voted, was in *Moulton*, but it was really in *Morton*, which is in another Hundred, and he should have polled for it at another Booth. As no objection, however, was taken by the Poll Clerk, and as the similarity of the names, in pronounciation, might easily mislead the Voter, the Poll was allowed to be corrected. *GOOD.*

KING James, Holt—ASTLEY & COKE—*Objection— not assessed—(See P. B. p.* 126*).*

He voted for an Annuity, but by mistake of the Poll Clerk, it was entered for Land, in the occupation of Robert King. The Voter produced his grant of the Annuity, and was ready to take his oath that he told the Poll Clerk it was for the Annuity that he voted. The Land out of which the Annuity issued, was proved to be assessed. *GOOD.*

Description on Poll.

BARTRAM Wm. Ingoldesthorpe—ASTLEY & COKE —*Objection—non assessment.—(See P. B. p.* 156*).*

THE Voter received 7s. per week, from an Estate, in the occupation of Waybourn, and had sold it for this weekly payment.—He voted for the House and not for the Annuity, and had executed the Conveyance of the House. As it appeared to be the Voter's own neglect, and not that of the Poll Clerk, the vote was held *BAD.*

CLIPPERTON John, Trimingham—WODEHOUSE— *Objections—not assessed, and voted twice— (See P. P. p.* 37*).*

John and Jonathan Clipperton were the joint Owners of a House, which the latter occupied.—John was entered by mistake, twice on the Poll; it should have been Jonathan the second time, which was proved by both of them.—A division of the Property had been made by setting out the parts, but not by deed; and John had let his part to his Brother Jonathan—But at the Poll John had stated himself to be the occupier, although no part of it was in his possession. Jonathan only was assessed.

Harvey contended that the 30. Geo. 3. was complied with, as the actual Tenant, at the time of making the rate, was on the assessment, which was all that was required by the Act.

But the ASSESSOR held that the only question here was, whether the Freehold was correctly described on the Poll; here the Voter had given his own name to the Poll Clerk as Occupier instead of his Tenant's. It was his neglect, and the false description could not be corrected. *BAD.*

SMITH Thomas, Rushall—WODEHOUSE—*Objection —not assessed—(See P. B. p.* 32*).*

He gave in at the Poll, that he voted for an Estate, at Dickleburgh, but it is in Langmere, an adjoining Parish, and the Voter did not know its boundary. These Parishes are in different Hundreds, and he has no Land in Dickleburgh—the Voter is in the rate for Langmere.

Cooper.

Cooper. The objection against this Vote is confined to non-assessment, but it is not proved that the Voter's Estate is not assessed. There should have been another objection, that there is no Freehold.

Mackintosh. The non-assessment is proved, if it be shewn that neither the Voter's name nor his Tenant's is on the rate for the Parish, which is described on the Poll.

ASSESSOR. The point is a short one—The Voter is assessed where his Freehold lies, and his object is to correct the Poll as to the situation of it—But every Person going to vote is bound to know where his Freehold lies. If the Clerk be accurate in copying the Voter's own description, the Poll cannot be corrected. *BAD.*

UTTING Henry, Yelverton—ASTLEY & COKE—*Objection—not assessed, and no freehold.—*
(See P. B. p. 121).

The estate for which he voted was entered on the Poll as lying in *Yelverton;* but it was actually in *Alpington,* where he was assessed. *Alpington* was stated to be a Hamlet of Yelverton. There is but one church, but there are separate rates, and they lie in different Hundreds.

ASSESSOR. This is a Hamlet for which a distinct Assessment is made. It is a separate District or Division, for the purposes of the Land-tax, and the Voter ought to have given in its name at the Poll. *BAD.*

PETERSON William, Wymondham—WODEHOUSE *—Objection—not assessed, and no freehold—*
(See P. B. p. 78).

He appeared on the Rate for *Vicar-street* Division, in the parish of Wymondham.

Alderson submitted, that on the principle upon which the last case was decided, the Voter should have given the name of the Division at the Poll.

Harvey contended, that this Division was no distinct Township or Place; it was only a Ward or District of the town, similar to those into which Yarmouth and other large Towns are divided for the convenience of parochial purposes.

The ASSESSOR, wishing to learn the nature of this Division, postponed the decision till evidence respecting the town should be produced.

On a subsequent day it was shewn, that Wymondham is divided into ten of these Districts, called *Divisions*—that there is but one parish, and one Poor's Rate; and that there are separate Collectors of the Land-tax for each Division.

Mackintosh

Mackintosh. It is admitted, that there is but one Church and one Poor's Rate, but the case is the same with Yelverton and Alpington. However closely joined those Divisions may be in other respects, they are separate and distinct places for Assessments to the Land-tax, which is the only point upon which the decision turned in the Alpington Case. These are not modern divisions for the convenience of collecting the Land-tax; they are as ancient as any Records or Antiquities of the County of Norfolk, and they formerly consisted of a number of independent villages which, as the buildings increased, gradually coalesced together, and formed the town of Wymondham. The distinction in the original Land-tax Acts were made with a view of providing for Cases like the present. And it appears by the advertisements in the newspapers, that the names of these Divisions are as notorious as those of any towns in the County.

Harvey. One fact very clearly distinguishes the two Cases. Yelverton and Alpington (the one a Town and the other a Hamlet) are in different Hundreds, and were classed at the Election in different Booths. Wymondham forms but one Town, all lying in the same Hundred, and distinguished by one name in the lists given to the Clerks at the Poll. For Yelverton and Alpington there are two distinct sums assessed; each place is bound to raise its specific sum; but there is only one gross sum for all Wymondham, and the portions raised in each Division may be altered from time to time, so as the whole be levied. Nothing can be more manifest than the distinction which is made between the two Cases by the Act itself.

Assessor. The question here is, whether the Voter has brought his Vote forward with all the circumstances necessary to clothe it. The Act of 20th Geo. 3, directs, that every Freehold for which a Vote is given shall be assessed to the Land-tax: and the Voter must state where his Freehold lies, in order to afford a clue to information respecting the Assessment. In the former Case, Utting voted for an Estate at *Yelverton;* to shew that he has a Freehold there, an Assessment is resorted to for a place called *Alpington*, which is said to be a *Hamlet belonging* to Yelverton; not a *Division lying within* and composing a *part* of it. If it *belongs* to Yelverton, it cannot be the same place with it. It is called a Hamlet, which is a known distinguishing description of an extent of country as much as a village is. Alpington appears therefore to be *collateral* with Yelverton—not the same town. Then, if the Act of 20th Geo. 3. has the object before stated, that object would be defeated by allowing an Assessment in Alpington to be sufficient for an Estate which is said to lie in Yelverton. In the present Case, Vicar-street Division *lies in* Wymondham, and forms a *part* of it—there is no town of Wymondham, independent of the Divisions, of which this forms one. Hence arise the different features of the two Cases: in one, there is a *Hamlet belonging to* a Parish; in the

other *a Division lying within* it. The objection, therefore, of Non-assessment must fall.

Upon the second objection, however, of there being no Freehold, it was proved that the Estate for which the Vote was given was Copyhold. *BAD.*

Evidence.

NEWTON George, Yarmouth.—ASTLEY & COKE —*Objection—not assessed.—(See P. B. p. 63).*

THE Estate was purchased by the Voter, of Scott's Executors, in June 1801.—Read was then tenant, and he appears as the occupier in the Rate for 1802.—The Voter himself did not attend, but the facts were stated by Mr. Steward, who prepared the conveyance to the Voter.

Cooper objected to this evidence.

The ASSESSOR thought there should be a courtesy in these proceedings, which should dispense with the strictness of legal proof.—The Sheriff had no power to compel witnesses to attend; or, if they did attend, to give evidence on oath.—In most cases, legal evidence could not be procured, and as the Sheriff was responsible for the exercise of his discretionary power, it was sufficient if the evidence were such as would satisfy his mind.

In the present case the Assessor was perfectly satisfied with the respectable testimony, which had been given; but as Mr. Steward appeared to be an Agent for Sir Jacob Astley and Mr. Coke, he should in this case wish him, for the satisfaction of the adverse party, to produce the deeds.—He should not have required this in any other case.

Mr. Steward on a subsequent day produced the conveyance, and the vote was held *GOOD.*

BALDWIN Wm. Jun. Bury—WODEHOUSE—*Objection—not assessed.—(See P. B. p.* 184*).*

Mr. Pate, an Attorney, proved the Voter to be Mortgagee in possession of the Estate at Thetford, for which he voted, and stated, that the Land-tax had been redeemed in pursuance of an agreement

agreement made on the purchase.—Mr. Pate prepared the Conveyance.—This was objected to by *Alderson and Hulton*, as being insufficient evidence of the Redemption of the Land-tax, as the contract should have been produced.—But *Cooper* contended that it was necessary only for the evidence to be satisfactory to the Returning Officer, as to the fact of Redemption; and on Mr. Pate being sworn, the Vote was held *GOOD.*

BARNES Wm. Yarmouth—ASTLEY and COKE—*Objection—not assessed—(See P. B. p. 53).*

He appeared on the Rate for the Second South Midd, (a Division of the Borough of Great Yarmouth) both as Owner and Occupier, as described on the Poll. The Assessor allowed the production of the Rate to be sufficient, without other evidence, to support the Vote. *GOOD.*

SKIPPON John, Middleton.—ASTLEY & COKE. *Objection—not assessed.—(See P. B. p. 89).*

Thomas Skippon was on the Rate, but by the probate of his will it appeared, that he had devised his Estate, at Middleton, to *John* his son. This was allowed to support the Vote, without producing the Voter, or any other evidence. *GOOD.*

FORD Thomas, Edgefield—ASTLEY & COKE—*Objection—not assessed, and voted twice—(See P.B. p. 125).*

The assessment was proved, and the second objection was attempted to be supported by shewing that the name of the voter was entered twice on the Poll, with the same description.

Alderson. The second objection must be proved by *positive* evidence of the fact, not by the *presumptive* evidence arising from a repetition on the Poll. Indeed, the presumption from the Poll, should be in favour of there being two Persons of the same name, otherwise perjury is presumed in the voter.

Cooper. The objecting party is not bound to go further than to shew the double entry on the Poll. The *onus* is on the defending party after it is proved that there are two Persons on the Poll, whose descriptions agree in every point. And there is a presumption against the voter from his not appearing in Court.

ASSESSOR. There certainly is a presumption in favour of the objection, arising from the circumstance, that there is but one Person of this name upon the Rate. The voter should be brought into Court, and the decision postponed for a reasonable time.

On a subsequent day, the Rev. Mr. Girdlestone attended, to prove that Ford had acknowledged to him, that he had voted twice; first for Col. Wodehouse, and afterwards for Sir J. Astley and Mr. Coke. Mr. G. said, that there was another Person of the name of Ford, at Edgefield, the voter's son, but he did not know his christian name. Mr. G. called at the voter's house, on the day when Ford went to Norwich to vote the second time, and the son was then at home.

Alderson contended, that the evidence was still insufficient, as it should have been proved that no other Person of this name and description could have voted. But the Assessor held the evidence to be satisfactory. *BAD.*

PEARSON John, Standford—ASTLEY & COKE—*Objection—not assessed.*—*(See P. B. p.* 112).

The Rate for this Parish, produced by the Clerk of the Peace, was without a Title, the head appearing to have been cut off; but the names, sum and signatures of the Commissioners, were perfect.

It was submitted by the Counsel, for Sir Jacob Astley and Mr. Coke, that the Counsel for Col. Wodehouse had not produced evidence to support their objection, and that the *onus probandi* lay upon them to shew that the voter was not assessed.

Harvey contended, that he had produced the best evidence which the case would admit of, viz. the Rate in the custody of the Clerk of the Peace: if that Rate was defective, it was not *his* fault, but that of the Officer, who was bound to produce it;—but, in fact, it was not defective in any material point; it was indorsed as the Rate for the Parish of Standford; it agreed in the number of the Proprietors and the amount of the sums assessed, with the Rate for the *present* year; and it was regularly signed and allowed by three very respectable Commissioners, well known in the County. It was manifest that no collusion or fraud could have been intended, and he therefore maintained that the Rate should be admitted as evidence.

The ASSESSOR held, that as a perfect Duplicate could be procured from the Commissioners, it ought to be produced by the Clerk of the Peace, and that time should be allowed him to obtain it.

On a subsequent day, a perfect Duplicate was produced, and the voter not appearing to be assessed, his vote was held *BAD.*

Office.

BIRT Joseph, Acle.—WODEHOUSE—*Objection—disqualified by Office.—(See P. B. p. 166).*

MR. Birt is Post-Master of Acle, and was proved to have acted in that capacity.—But it was stated by Mr. Litchfield, the Post-Master of Norwich, that he is merely what is called a *Sub-deputy*; that he is addressed as such in the Orders from the General Post-Office, and that he remits daily the money which he receives to Mr. Litchfield, who is responsible for him. The letters from Acle are marked again with the Norwich post-mark on their passing through Norwich. It appeared also that Mr. Birt was originally appointed not by the Post-Masters General, but by Mr. De Hague, a former Post-Master of Norwich. His salary however is paid by Government.

Cooper in defending this vote, cited the case of Wilson, the Post-Master of Barton—Bedf. case, 2 Lud. 1 Heyw. 203—Orme 124, and contended, that the case was not even within the Letter of the 22d Geo. 3d. c. 41.

But the Assessor distinguished this case from that cited, by the payment of the salary from Government;—the Sub-deputy of Barton having only a penny per mile as a distributor. He therefore held the vote to be *BAD.*

SMITH William, Yarmouth—WODEHOUSE—*Objection—disqualified by Office—(See P. B. p. 67).*

The voter was stated to be a Coal-Meter, appointed by the Commissioners of his Majesty's Customs, and that he was therefore disqualified to vote by the Act of 22d Geo. 3, cap. 41.

Pratt, another Coal-Meter, who had voted for Coke and Wodehouse, attended to prove the appointment. Mr. Harvey apprised him that he was not bound to answer any questions on this point, which might tend to subject himself, as well as Smith, to the penalties of the Act. Pratt however proceeded to give his evidence, which went to prove that Smith was originally appointed by the Corporation of Yarmouth to measure coals in the vessels coming into harbour on their behalf; but that he had also a deputation from the Commissioners of the Customs to mete at the same time for the Revenue;

Revenue;—that this appointment was always purchased of the Corporation of Yarmouth, and that Smith did not mete himself, but performed his office by deputy;—and that he did not charge, collect, or levy any duty, but received so much per chaldron from the merchants for measuring. The witness produced his own deputation from the Commissioners of the Customs, by which he was appointed "a Meter, Measurer, and Weigher of Coals, Culm and Cinders."

Harvey. This office does not come within the words or meaning of the Act, by which those only are disqualified who are "employed in the charging, collecting, levying, or managing the Customs or any branch or part thereof." Here the deputation does not authorise the Meters to "charge, collect, or levy" any thing, nor are they actually so employed; neither can they be considered to "manage" any part of the Revenue, in the proper and received sense of the word. And as the object of the Act is to disfranchise, it ought to be construed strictly.

Alderson. The Act must have had in view every Officer employed in the Revenue, of whatever nature his employment might be. The "meting, measuring, and weighing," are preparatory and necessary steps to the "charging and collecting;" and it is clear that the offices which these Meters hold under the Customs, are distinct from those to which they are appointed by the Corporation.

The Assessor thought that the Act was meant to extend to every Person who is employed, either by himself or his deputy, under the Commissioners of the Customs, in raising the Revenue.

BAD.

Possession.

DUNHAM Michael, Hackford.—ASTLEY & COKE. *Objection—not assessed.—(See P. B. p. 46).*

A Few days before the Election, the Voter agreed to sell his Estate to Mr. Wymer, who was to take the rent for the half-year which would be due at the next Michaelmas. No conveyance was made, but a guinea had been paid as part of the purchase-money. The Assessor held the Voter to be merely a Trustee for the Purchaser. *BAD.*

DOR Charles, Watton—COKE and ASTLEY *—Objection—not assessed, and no freehold—* (*See P. B. p.* 105).

The Voter purchased his Estate on the 10th of July 1801. He began to plough the summerley on the 11th, but did not take full possession of the farm till Michaelmas. The Tenant who then quitted did not pay him any Rent. On the 17th of October the conveyance was executed; the Poll commenced on the 12th of July 1802.

Harvey submitted that the Voter's possession before Michaelmas, when he began to receive the profits, was not such as would entitle him to vote, in which opinion the Assessor concurred.

BAD.

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The number of Votes Disallowed was 478.

A Comparative View of the Number of Persons voting as Residents within the Hundreds and Principal Towns of the County, at the two Contested Elections in 1768 *and* 1802; *and also of the Number of Freeholds voted for within the same Towns and Hundreds.*

HUNDREDS, &c.	1768 W.	1768 DG.	1768 A.	1768 C.	1802 A.	1802 C.	1802 W.	Freeholds 1768	Freeholds 1802	Voters 1768	Voters 1802
LODDON	39	35	39	33	24	33	77	98	116	73	97
Loddon	5	8	11	11	4	11	22	29	31	18	26
	44	43	50	44	28	44	99	127	147	91	123
CLAVERING	49	51	29	28	26	33	100	134	156	79	126
Haddiscoe	6	6	5	7	0	6	19	9	19	12	19
	55	57	34	35	26	39	119	143	175	91	145
HENSTEAD	10	11	34	32	25	34	34	68	72	44	62
The Shottishams.	1	0	19	20	7	9	4	18	24	20	11
	11	11	53	52	32	43	38	86	96	64	73
DEPWADE	40	33	72	65	30	56	152	175	153	105	180
The Strattons	7	7	4	3	2	8	24	13	26	11	31
	47	40	76	68	32	64	176	188	179	116	211
EARSHAM	60	56	47	39	26	48	81	142	172	102	111
Redenhall w. Harleston	12	7	34	28	7	22	24	48	41	41	33
	72	63	81	67	33	70	105	190	213	143	144
DISS	37	38	34	34	77	84	30	105	144	72	110
Diss	21	20	32	29	58	63	9	57	76	51	68
	58	58	66	63	135	147	39	162	220	123	178
GUILTCROSS	17	20	36	37	60	72	18	80	98	55	85
Banham	10	11	14	13	22	28	14	28	38	25	39
Garboldisham	13	11	7	6	6	8	11	21	22	19	18
	40	42	57	56	88	108	43	129	158	99	142
SHROPHAM	3	39	18	12	24	25	31	52	44	50	54
Attleburgh	27	27	1	1	7	13	32	32	55	28	40
Buckenhams	41	37	18	14	22	31	44	68	79	55	69
Thetford	25	26	35	29	67	86	18	66	92	58	89
Great Ellingham	23	26	6	3	1	2	27	34	34	30	28
	147	155	78	59	121	157	152	252	304	221	280
WAYLAND	67	71	12	8	26	33	61	106	94	80	88
Carbrooke	10	13	0	3	2	4	16	14	21	13	18
Watton	18	21	2	2	2	4	21	15	15	22	23
	95	105	14	13	30	41	98	135	130	115	129
FREEBRIDGE LYNN	50	58	51	51	122	133	24	124	174	105	148
Borough of Lynn	69	76	151	141	313	310	11	220	337	219	326
	119	134	202	192	437	443	35	344	511	324	474

HUNDREDS, &c.	1768 W.	D.	G.	A.	C.	1802 A.	C.	W.	Freeholds 1768	1802	Voters 1768	1802
FREEBRIDGE MARSHLAND	35	6	53	52	156	154	7	96	161	88	165	
Walſoken	5	5	2	2	32	32	0	27	47	7	32	
	40	41	55	54	188	186	7	123	208	95	195	
GALLOW	50	60	35	25	65	80	17	86	97	85	91	
Fakenham	7	8	10	9	23	25	1	5	9	17	25	
	57	68	45	34	88	105	18	91	106	102	116	
MITFORD	72	63	41	30	24	55	103	130	155	104	131	
Eaſt Dereham	28	41	48	22	48	68	33	69	74	71	84	
Mattiſhalls	17	14	4	3	8	15	24	28	43	20	34	
	117	121	93	55	80	138	160	227	272	195	249	
SOUTH GREENHOE	47	58	22	14	48	53	46	92	103	71	97	
Swaffham	23	31	8	13	31	36	13	20	21	38	46	
	70	89	30	27	79	89	59	112	124	109	143	
GRIMSHOE	43	50	24	20	41	48	35	75	78	70	77	
Feltwell	25	28	5	2	27	27	21	39	58	30	48	
Methwold	15	24	9	2	27	27	7	36	38	25	34	
	83	102	38	24	95	102	63	150	174	125	159	
FOREHOE	73	70	17	20	32	55	82	96	130	91	119	
Hingham	36	31	5	2	0	1	52	50	67	37	52	
Wymondham	74	59	16	8	30	50	73	93	117	79	102	
	183	160	38	30	62	106	207	239	314	207	273	
HUMBLEYARD	15	16	26	27	15	28	53	40	55	48	67	
The Meltons	8	2	0	6	6	8	7	15	11	8	13	
	23	18	26	33	21	36	60	55	66	50	80	
TUNSTEAD	76	68	45	39	14	21	108	125	133	114	122	
North Walſham	5	7	26	24	5	8	33	26	37	31	39	
Worſtead	12	9	9	3	0	1	18	18	18	17	18	
	93	84	80	66	19	30	159	169	188	162	179	
HAPPING	54	55	49	25	12	22	135	104	158	82	145	
Happiſburgh	4	4	11	11	0	1	21	15	23	15	21	
	58	59	51	36	12	23	154	119	181	102	166	
BLOFIELD	25	25	53	51	13	41	66	88	92	77	82	
Blofield	5	4	11	10	4	3	15	17	22	15	18	
	30	29	64	61	17	44	81	105	114	92	100	
TAVERHAM	35	29	29	21	22	39	48	66	77	57	73	
Catton	7	6	4	3	4	7	3	5	10	10	8	
Felthorpe	2	1	4	3	7	7	1	10	16	5	8	
	44	36	37	27	33	53	52	81	103	72	89	

HUNDREDS, &c.	1768 W.	1768 DG.	1768 A.	1768 C.	1802 A.	1802 C.	1802 W.	Freeholds 1768	Freeholds 1802	Voters 1768	Voters 1802
WALSHAM	16	11	50	51	11	23	103	70	128	61	115
Acle	5	5	16	16	12	17	11	27	38	21	24
	15	16	66	67	23	40	114	103	166	82	139
NORTH ERPINGHAM	28	43	99	93	33	47	121	137	169	132	154
Cromer	1	4	8	9	5	9	12	12	19	11	17
	29	47	107	102	38	56	133	149	188	143	171
SOUTH ERPINGHAM	42	39	94	74	60	85	114	135	193	125	176
Aylsham	3	10	11	12	8	16	15	4	7	18	23
Coltishall	6	1	13	8	5	9	12	12	19	14	16
Cawston	1	2	18	16	24	27	4	27	30	19	28
	52	52	136	110	97	137	145	178	249	176	243
HOLT	31	44	112	96	108	105	32	154	140	142	139
Blakeney	1	9	14	6	9	8	1	17	11	15	10
Brifton	3	5	12	10	25	25	7	27	39	15	32
Holt	1	5	28	23	31	28	5	22	37	29	35
	36	63	166	135	173	166	45	220	227	201	216
EYNSFORD	38	31	83	76	101	127	78	153	194	115	182
Bawdfwell	7	6	11	10	21	23	1	19	31	17	24
Foulsham	0	1	8	7	13	11	1	17	19	8	14
Ringland	3	4	0	3	7	10	3	9	14	5	10
Reepham	1	1	11	11	6	8	3	13	10	12	10
	49	43	113	107	148	179	86	211	268	157	240
BROTHERCROSS	23	31	8	17	35	46	0	46	46	40	46
South Creak	15	17	4	6	11	22	5	21	29	21	22
	38	48	12	23	46	68	5	67	75	61	68
NORTH GREENHOE	32	41	100	77	84	103	25	131	122	126	115
Wells	21	31	20	32	75	75	0	56	82	52	75
	53	72	120	109	159	178	25	187	204	178	190
SMITHDON	15	19	52	52	65	61	23	66	72	69	80
Docking	13	13	8	8	16	16	0	21	15	21	16
Snettisham	3	1	17	12	6	8	3	14	11	17	9
	31	33	77	72	87	85	26	101	98	107	105
CLACKCLOSE	63	72	110	101	233	226	21	205	282	173	252
Downham	1	8	34	27	49	47	4	28	49	35	53
Upwell	6	11	27	23	49	44	22	42	82	34	70
	70	91	171	151	331	317	47	275	413	242	375
LAUNDITCH	73	66	98	80	129	159	56	184	234	160	193
North Elmham	1	0	19	19	2	8	10	17	16	19	14
Litcham	14	10	0	3	0	7	15	14	11	14	15
	88	76	117	102	131	174	81	215	261	193	222
EAST FLEGG	33	34	16	13	26	32	48	64	75	48	74
Yarmouth	240	231	227	199	372	408	401	466	808	450	771
	273	265	243	212	398	440	449	530	883	498	845

HUNDREDS, &c.	1768 W.	1768 DG.	1768 A.	1768 C.	1802 A.	1802 C.	1802 W.	Freeholders 1768	Freeholders 1802	Voters 1768	Voters 1802
WEST FLEGG ——	23	24	26	18	15	21	67	52	86	46	82
Martham ——	1	3	13	11	6	7	21	21	26	14	28
	24	27	39	29	21	28	88	73	112	60	110
CAMBRIDGE & ISLE of ELY	43	42	21	16	53	59	15	—	—	61	69
LONDON & WESTMINSTER	40	42	18	18	47	47	16	—	—	59	63
NORWICH ——	157	124	185	148	109	156	172	—	—	313	281
SUFFOLK ——	131	137	105	83	80	98	142	—	—	231	223
DISTANT VOTES	50	55	19	18	25	27	15	—	—	72	40
	421	400	348	283	314	387	360	—	—	736	676
NUMBERS RETURNED	2680	2754	2977	2610	3612	4317	3517	—	—	5552	7251

Abstract of the Poll of 1768, *from the Copy published by Mr. Crouse.*

	W.	DG.	A.	C.
Joint Votes —— —— ——	2312	2312	2400	2400
Sir Edward Aſtley and Sir Armine Wodehouſe ——	269	—	269	—
Wodehouſe and Coke —— ——	66	—	—	66
Aſtley and De Grey —— ——	—	294	294	—
De Grey and Coke —— ——	—	121	—	121
Single Votes —— —— ——	18	21	20	11

Abstract of the Poll of 1802, *from the Copy published by Stevenson and Matchett.*

	A.	C.	W.
Aſtley and Coke—Joint Votes —— ——	3494	3494	—
Aſtley and Wodehouſe —— —— ——	61	—	61
Coke and Wodehouſe —— —— ——	—	673	673
Single Votes —— —— ——	70	159	2794

A List of the KNIGHTS of the SHIRE, for the County of NORFOLK, from the Reformation to the Restoration, i. e. from 1542 *to* 1660.*

(Henry 8th) Jan. 16, 1542.
Sir Roger Townſend, Knight

(Edward 6th) Nov. 8. 1547.
Sir Edward Knyvet, Knight
Nicholas Le Strange

March 1, 1553.
Robert Lord Dudley
Thomas Lord Fitzwalter

(Q. Mary) Oct. 5, 1553.
Sir Richard Southwell, Knight
Sir Henry Bedingfeld, Knight

April 2, 1554.
Sir Richard Southwell, Knight
Sir Henry Bedingfeld, Knight

(Philip & Mary) Nov. 12, 1554.
Sir Richard Southwell, Knight
Sir John Shelton, Knight
[In Blomfield's Hiſtory of Norfolk, v. 1. p. 760, the Repreſentatives of the County for this Parliament are ſtated to have been Sir Wm. Wodehouſe, Knt. and Sir Nicholas Le Strange.]

Oct. 21, 1555.
Sir John Clere, Knight
John Appleyard, Eſquire

Jan. 20, 1557.
Sir Henry Bedingfeld, Knight
Sir William Wodehouſe, Knight

(Q. Elizabeth) Jan. 23, 1558.
William Wodehouſe
Nicholas Le Strange

Jan. 11, 1562.
Sir William Wodehouſe, Knight
Sir Edward Warner, Knight

April 2, 1571.
Sir Chriſtopher Heydon, Knight
Sir William Butts, Knight

May 8, 1572.
Henry Wodehouſe
Francis Windham, Eſquire

Nov. 23, 1585.
Sir Drew Drury, Knight
Nathaniel Bacon, Eſquire

Oct. 29, 1586.
Thomas Farmer, Eſquire
William Greſham, Eſquire

Feb. 4, 1588.
Sir Henry Wodehouſe, Knight
Chriſtopher Heydon

Nov. 19, 1592.
Edward Coke, Eſquire, *Speaker*
Nathaniel Bacon, Eſquire

Oct. 24, 1597.
Sir Roger Townſhend, Knight
Henry Gawdy, Eſquire

Oct. 7, 1601.
Sir Baſſingborn Gawdy, Knight
Sir Henry Gawdy, Knight

(James 1ſt) March 19, 1603.
Nicholas Bacon, Eſquire
Sir Charles Cornwallis, Knight

* Counties firſt ſent Knights to Parliament in the year 1258; before this the Knights met only in their own Counties.—We have no account of the Repreſentatives of Norfolk before the Election in 1542; but in Blomfield's Hiſtory, vol. 1. p. 757, we find that John Wodehouſe, who gained immortal honour at the Battle of Agincourt, repreſented this County in Four different Parliaments, viz. 1409, 1413, 1414, and 1416.—This ſame John Wodehouſe was one of the Executors of the Will of Henry 4th, and alſo of the Will of Mary the 5th.

April 5, 1614.

Nathaniel Bacon, Eſquire
Sir Charles Cornwallis, Knight

Jan. 30, 1620.

Sir Hamond Le Strange, Baronet
Drugo Drewry, Eſquire

Feb. 19, 1623.

Sir Thomas Holland, Knight
Sir John Corbett, Baronet

(Charles 1ſt) June 21, 1625.

Sir Edward Coke, Knight
Sir Edward Drury, Knight

Feb. 6, 1625.

Sir Edward Coke, Knight
Sir Robert Bell, Knight

March 16, 1628.

Sir Roger Townſhend, Baronet
John Heveningham, Eſquire

April 13, 1640.

Sir John Holland, Baronet
Sir Edward Montford, Knight

Nov. 3, 1640.

Sir John Potts, Baronet
Sir Edward Montford, Knight

And on their Deaths,

Sir John Palgrave, Baronet
Sir John Hobart, Baronet

(Oliver Cromwell) July 5, 1653.

Robert Jermy
Tobias Frere
Ralph Wolmer
Henry King
William Burton

[No Repreſentatives for any Cities o Boroughs (except London) ſat in this Par liament.]

Sept. 3, 1654.

Sir John Hobart, Baronet
Sir William Doyley, Knight
Sir Ralph Hare, Baronet
Thomas Weld, Eſquire
Robert Wilton, Eſquire
Thomas Sotherton, Eſquire
Philip Wodehouſe, Eſquire
Robert Wood, Sen. Eſquire
Philip Bedingfeld, Sen. Eſquire
Tobias Frere, Eſquire

Sept. 17, 1656.

C. Fleetwood, *Lord Deputy of Ireland*
Sir John Hobart, Baronet
Sir William Doyley, Bart.
Sir Ralph Hare, Baronet
Sir Horatio Townſhend, Baronet
Philip Wodehouſe, Eſquire
Robert Wilton, Eſquire
Robert Wood, Eſquire
John Buxton, Eſquire
Thomas Sotherton, Eſquire

[In theſe two laſt Parliaments, Thetford and Caſtle Riſing ſent no members—only Norfolk, Norwich, Yarmouth and Lynn.]

Jan. 27, 1658.

Sir Horatio Townſhend, Baronet
Sir William Doyley, Knight.

KNIGHTS

KNIGHTS of the SHIRE for the County of NORFOLK, from the Restoration to the present time, with the number of Votes polled at each Contested Election.

(Charles 2d.) 1660.

Sir Horatio Townſhend, Bart.
Sir William Doyley, Kt.

1663.

Sir John Hobart, Bart.	2740
Sir Roger Kemp, Bart.	2732
Sir Nevile Catelyn, Kt.	1987
Sir William Coke, Bart.	1743

1670.

Sir Roger Kemp, Bart.	1434
Sir John Hobart, Bart.	1620
Sir Thomas Hare, Bart.	1074
Sir Nevile Catelyn, Kt.	1530

1672.

Sir John Hobart, Bart.	2047
Sir Peter Gleane, Bart.	2984
Sir James Aſtley, Bart.	2996
Sir William Coke, Bart.	1974

1676.

Sir John Hobart, Bart.	3440
Sir Peter Gleane, Bart.	3412
Sir Thomas Hare, Bart.	1733
Lord Paſton	1147

1678.

Sir John Hobart, Bart.	3417
Sir Nevile Catelyn, Bart.	3310
Sir Chriſtopher Calthorpe, Bart.	3174
William Windham, Eſq.	2898

1679.

Sir John Hobart, Bart.	3071
Sir Peter Gleane, Bart.	2994
Sir Jacob Aſtley, Bart.	2978
Sir Thomas Hare, Bart.	2844

1680.

Sir John Hobart, Bart.	3359
Sir Peter Gleane, Bart.	3202
Sir Chriſtopher Calthorpe, Kt.	2517
Sir Nevile Catelyn, Kt.	2549

1684.

Sir Jacob Aſtley, Bart.	3415
Sir Thomas Hare, Bart.	3414
Sir Henry Hobart, Bart.	692
Sir John Holland, Bart.	410

(James 2d.) 1688.

Sir William Coke, Bart.	1995
Sir Henry Hobart, Bart.	1798
Sir Jacob Aſtley, Bart.	1670
Sir Roger Potts, Bart.	1159

1689.

Sir Jacob Aſtley, Bart.	2794
Sir William Coke, Bart.	2771
Sir Henry Hobart, Bart.	1372

(William 3d.) 1695.

Sir Henry Hobart, Bart.
Sir Jacob Aſtley, Bart.

1698.

Sir William Coke, Bart.	3107
Sir Jacob Aſtley, Bart.	2960
Sir Henry Hobart, Bart.	2244
Lord Paſton	2000

1700.

Roger Townſhend, Eſq.	2077
Sir Jacob Aſtley, Bart.	1838
Horatio Walpole, Eſq.	1374
Lord Paſton	1000

(Q. Anne) 1701.

Sir John Holland, Bart.	2863
Roger Townſhend, Eſq.	2770
Sir Jacob Aſtley, Bart.	1788

July 29, 1702.

Sir John Holland, Bart.	2802
Sir Jacob Aſtley, Bart.	2736
Sir William Coke, Bart.	2646
Sir Edward Ward, Bart.	2629

1705.

Sir John Holland, Bart.
Hon. Roger Townſhend

1708.

Sir John Holland, Bart.
Aſh Windham, Eſq.

1709.

Sir John Holland, Bart. RE-ELECTED (having accepted a place)

Oct. 11, 1710.

Sir John Wodehouſe, Bart.	3217
Sir Jacob Aſtley, Bart.	3200
Aſh Windham, Eſq.	2783
Robert Walpole, Eſq.	2397

Sept. 9, 1713.

Sir Edmund Bacon, Bart.
Sir Jacob Aſtley, Bart.

(George 1ſt.) Feb. 18, 1714.

Thomas De Grey, Eſq.	3183
Sir Jacob Aſtley, Bart.	3059
Sir Ralph Hare, Bart.	2840
Erasmus Earle, Eſq.	2635

April 1, 1722.

Thomas Coke, Eſq.
Thomas De Grey, Eſq.

(George 2d.) Aug. 23, 1727.

Sir Thomas Coke, Bart.
Sir John Hobart, Bart.

1728.

[The above being made Peers.]

Sir Edmund Bacon, Bart.
Harbord Harbord, Eſq.

May 22, 1734.

Sir Edmund Bacon, Bart.	3224
William Wodehouſe, Eſq.	3153
William Morden, Eſq.	3147
Robert Coke, Eſq.	3081

March 23, 1736.

Armine Wodehouſe, Eſq. VICE
William Wodehouſe, Eſq. DEC.

May 13, 1741.

Hon. Edward Coke
Armine Wodehouſe, Eſq.

July 1, 1747.

Hon. George Townſhend
Armine Wodehouſe, Eſd.

May 8, 1754.

Hon. George Townſhend
Armine Wodehouſe, Eſq.

(George 3d.) April 1, 1761.

Right Hon. George Townſhend
Sir Armine Wodehouſe, Bart.

April 11, 1764.

Thomas De Grey, Jun. Eſq. VICE
Rt. Hon. G. Townſhend, now Marquis Townſhend

March 23, 1768.

Sir Edward Aſtley, Bart.	2977
Thomas De Grey, Eſq.	2754
Sir Armine Wodehouſe, Bart.	2620
Wenman Roberts Coke, Eſq.	2610

Oct. 26, 1774.

Sir Edward Aſtley, Bart.
Wenman Roberts Coke, Eſq.

May 8, 1776.

Thomas William Coke, Eſq. VICE
Wenman Roberts Coke, Eſq. DEC.

Sept. 20, 1780.

Sir Edward Aſtley, Bart.
Thomas William Coke, Eſq.

April 14, 1784.

Sir John Wodehouſe, Bart.
Sir Edward Aſtley, Bart.

[Mr. Coke declined a Conteſt two days before the Election.]

June 24, 1790.

Sir John Wodehouſe, Bart.
Thomas William Coke, Eſq.

June 2, 1796.

The ſame.

Nov. 15, 1797.

Jacob Henry Aſtley, Eſq. VICE
Sir John Wodehouſe, Bart. created a Peer

July 12 to July 20, 1802.

Thomas William Coke, Eſq.	4317
Sir Jacob Henry Aſtley, Bart.	3612
Hon. John Wodehouſe	3516

[The Poll continued 8 days]

Errata in the Poll Book.

PAGE 8 For Pridgeon Martin, read *Pidgeon* Martin
15 For Wright William, read *Knight* William
16 For Walker Nevel, clk. read *Walter Nevil*, clk.
24 For Knoble Thomas, read *Noble* Thomas
— For Robertſon Thomas, read *Robinſon* Thomas
26 For Laſt Timothy, read *Layt* Timothy
— For Manning William, read Manning William, *clerk*
— After Middleton William, dele "*clerk*" at the end of his name, and place him under *Breſſingham*, in Diſs hundred
— For Nobbs John, read Nobbs *James*
27 For Clarke E. O. read *Howman Edward, clerk*
— For Merler Benjamin, read *Marler* Benjamin
— For Hitchen William, read *Kitchen* William
— For Marlinger Thomas, read *Mullinger* Thomas
28 For Coleby Caliph, read Coleby *Caleb*
45 For Andrews J. G. Foulſham, read *Girling Andrews John, Eſq. Lynn Regis*
82 For Aſby John, read *Aſhby* John
91 For Budd John, read *Bird* John
98 For Murray Charles, Eſq. read *Money* Charles, Eſq.
98 For Whitemand John, read *Whiteman* John
99 For Door John, read *Dor* John
— For Caſe Mallett, read Caſe Mallett *Philip, Eſq.*
103 For Haycock Joſeph, jun. read Haycock *John*, jun.
109 For Hillingworth Anthony, read *Killingworth* Anthony, *ſen.*
— For Parſon Edward, read *Pearſon* Edward
— For Parſon Matthew, read *Pearſon* Matthew
111 For Carey Edmund, read *Caney* Edmund
— For Robinſon Samuel, read *Roberſon* Samuel
— For Watley Thomas, read *Wortley* Thomas
112 For Wiſh Richard, clerk, read *Whiſh* Richard, clerk
— For Willot Thomas, read *Willett* Thomas
118 For Watts Thomas, read *Worts* Thomas
145 For Kerr Stephen, *clerk*, read Kerr Stephen
152 For Ellis Francis, read *Edwards* Francis
161 For Croſtwick, read *Croſtwight*
188 For Wayte T. read *Wayth* T.

ERRATA

ERRATA AS TO RESIDENCE.

PAGE 7 Buſcall Matthew, Gray Joſeph, and Utting Chriſtopher, reſide at *Eaſt* Dereham, in Mitford, and not at Weſt Dereham, in Clackcloſe hundred.
8 Youngman Edward lives at *Stoke Ferry*, not Downham
26 Smith Hammond reſides at *Frenze*, not Diſs
27 Ewen John, clk. lives at *Roydon*, in Suffolk
28 Ward John, reſides at *Thelnetham*, in Suffolk, not Thelverton, in Norfolk
44 Nettleſhip *Bayfield* (not Bacon) John lives at *Tottington*, in Wayland hundred, not Tuttington, in North Erpingham.
81 Gates Francis lives at *Illington*, in Shropham, and not Hillington, in Freebridge Lynn
112 Clarke Robert, and Leech Thomas, both reſide at *Sturſton*, in Suffolk, and not Sturſton, in Norfolk
160 Norburn Thomas lives at *Roxham*, in Clackcloſe, not Wroxham, in Taverham hundred
171 Land Edmund lives at *Weſt Dereham*, in Clackcloſe, not Griſton, in Wayland hundred
184 Collins Thomas, Bergholt, read *Burgate*

ERRATA as to PLACE of FREEHOLD.

PAGE 186 Penn John, clerk, for Rougham, read *Roughton*
— Prentice M. for Briſton, read *Burſton*

☞ The names of Woods Daniel, page 7, Paſke George, p. 30, and Bulwer John, p. 121, appear in p. 143, p. 186, and p. 37—they ſhould therefore be ſtruck out of pages 7, 30, and 121.

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